

# ADDENDUM 1

## Volume 11

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1 IN THE CIRCUIT COURT OF  
2 MADISON COUNTY, TENNESSEE  
3 AT JACKSON, DIVISION I  
4

5 JON HALL,

6 Petitioner,

7 vs.

No. C00-422

8 STATE OF TENNESSEE,

9 Defendant.  
10

11 HEARING ON POST-CONVICTION

12 RELIEF PETITION

13 MAY 15, 2002

14 VOLUME III OF IV  
15

16  
17  
18  
19  
20 AMY MAYS

21 OFFICIAL COURT REPORTER

22 MADISON COUNTY JUSTICE COMPLEX

23 JACKSON, TENNESSEE 38301

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1 CLAY MAYO was called and being  
2 first duly sworn, was examined and  
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BUCHANAN:

6 Q Would you state your name for  
7 the record, please, sir?

8 A Clay Mayo.

9 Q And, Mr. Mayo, how are you  
10 employed?

11 A I'm self-employed. I have my  
12 own law office. I'm a lawyer, attorney.

13 Q And how long have you been an  
14 attorney?

15 A Since 1990.

16 Q And, are you licensed here in  
17 the State of Tennessee?

18 A That's correct.

19 Q And you were the trial counsel  
20 for Jon Hall; were you not?

21 A I was one of them.

22 Q One of them. And who was the  
23 other?

24 A Jesse Ford.

1 Q And were you -- At that time how  
2 were you employed?

3 A At that time, Mr. Ford and I had  
4 a partnership.

5 Q And when you received this  
6 appointment, did you receive it when you  
7 and him had the partnership?

8 A That's correct.

9 Q All right. Do you remember  
10 about when you received it?

11 A I don't. 1995 approximately.

12 Q Late '95, early '96?

13 A Yes, yes.

14 Q Fair to say you had the case a  
15 little over a year or -- a little over a  
16 year before it actually went to trial?

17 A Yes.

18 Q Okay. When you get a case like  
19 this where it's been through some other  
20 attorneys, what exactly do you do to  
21 bring yourself up to speed on the case?

22 A Read over the file, copies of  
23 motions that are in the file, obtain the  
24 court file in case the file we obtained

1 -- Well, first of all, obtain the file  
2 from the other attorneys who had it,  
3 then compare the court file, the file  
4 that exists in the court, courthouse,  
5 with what we've been provided, or what  
6 I've been provided, make sure that it's  
7 complete, and then review the file at  
8 that point. Now obviously, in this  
9 case, we did a lot more than that, but  
10 that's standard.

11 Q What extra did you do?

12 A Well, we had -- there were  
13 investigative reports. There was an  
14 investigator appointed by the Court,  
15 mitigation investigator, fact  
16 investigator, and a jury consultant. So  
17 we had those to review as well.

18 Q And what do you do after you  
19 review those reports?

20 A Well, if there are problems in  
21 the file that we see, we --  
22 hypothetically we would have, in most  
23 cases, filed -- let's say if there were  
24 motions missing that we thought should

1 have been filed, we would have filed  
2 that. If there were witnesses that  
3 should have been interviewed, we would  
4 have contacted the fact investigator if  
5 it was a fact witness and asked her in  
6 this case to interview that witness. If  
7 there was mitigation information that  
8 should have been obtained and was not,  
9 we would have asked the mitigation  
10 investigator to obtain that.

11 Q What exactly had -- How many --  
12 Had you tried any capital murder cases  
13 prior to this?

14 A Yes.

15 Q And which cases were those?

16 A Well, I was thinking about that  
17 earlier. I had tried State versus Jeff  
18 Bivens. It was a double homicide murder  
19 trial. Mike Mosier and I tried that  
20 together. Mr. Bivens was spared the  
21 death penalty. He was convicted of  
22 first degree murder. I had represented  
23 State versus Richard Redmond, again with  
24 Mr. Mike Mosier of the Madison County



1 bar, he may have been Chester County bar  
2 at that time, or both, that ended in a  
3 second degree plea. It did not go to  
4 trial. I think there were one or two  
5 others, and I can't think of their names  
6 right now. There were several other  
7 first degree murder trials but not death  
8 penalty cases.

9 Q Were you first or second chair  
10 in this Jon Hall --

11 A Second chair. That was made  
12 very clear to me by Judge LaFon.

13 Q All right. Did you feel like  
14 you were qualified to be second chair in  
15 a capital murder case at that time with  
16 what experience you did have?

17 A Absolutely.

18 Q You had familiarized yourself  
19 with most of the Tennessee Supreme Court  
20 opinions in capital murder cases  
21 previous to that time?

22 A Previous to that time, that's  
23 correct.

24 Q You had probably seen the

1 phrase, "Death is different," on more  
2 than one occasion in reading those; had  
3 you not?

4 A State that again.

5 Q You had probably seen the  
6 phrase, "Death is different," on at  
7 least one or more occasions in reading  
8 those opinions; had you not?

9 A Yeah. Yes, that -- at least the  
10 substance of that statement. Yes.

11 Q Had you been to any seminars on  
12 trying a capital murder trial?

13 A Yes, the TACDL, Tennessee  
14 Association of Criminal Defense Lawyers'  
15 seminar. I attended their death penalty  
16 seminar at least once, maybe twice prior  
17 to that, if I'm not incorrect. I'm not  
18 absolutely sure but I'm darn near sure.  
19 It was in Nashville one time and may  
20 have been there the second time as well.

21 Q Then you were familiar with the  
22 general push by the profession that  
23 attorneys were to take the penalty phase  
24 of a capital case especially serious.

1 A That's correct.

2 Q If as a group we had all fallen  
3 down, it seemed like that has been a  
4 place where lawyers as a group had  
5 fallen down, and there was a push about  
6 the time of this case to make lawyers  
7 aware to make sure that that part of the  
8 case was covered. Is that fair to say?

9 A I think, yes, there was. The  
10 position of the criminal defense bar at  
11 that time was -- I certainly felt -- I  
12 agree with that statement, that the  
13 position was that in general, we had  
14 failed to properly investigate and  
15 present the mitigation phase of death  
16 penalty cases.

17 Q Okay. Now, knowing all this,  
18 you had -- I guess your opinion was that  
19 you should leave no reasonable stone  
20 unturned in trying to find a defense and  
21 mitigation. Would that be fair to say?

22 A Yes.

23 Q And I'd like to put out this.  
24 You didn't feel like you needed to maybe

1 interview the 347th cousin, but probably  
2 the immediate family would be a good  
3 place to start? Would that be fair to  
4 say?

5 A Immediate family of who?

6 Q Of the Defendant.

7 A In regards to the mitigation.

8 Q Yes. Well in regards to  
9 mitigation and maybe even guilt or  
10 innocence.

11 A Yes, that's generally true, to  
12 the best of my recollection. This has  
13 been a while, but to the best of my  
14 recollection, I spoke with a lot of Mr.  
15 Hall's family members on the telephone.  
16 They were out of state. Some were  
17 interested at that time in helping.  
18 Some were -- None were antagonistic, but  
19 some were a lot more interested in  
20 assisting than others. And, yes, I did  
21 feel that that was necessary.

22 Q Do you remember there being a  
23 problem, by the time you got the case,  
24 with Jeff Hall's testimony being gone,

1 being as how he was dead by the time you  
2 got the case?

3 A Yes.

4 Q Did you have any theory or  
5 tactics that you thought you would use  
6 in trying to get that testimony into the  
7 court some way?

8 A Quite honestly, I don't recall.  
9 I recall the issue. I know that Mr.  
10 Hall, Jon Hall, was interested in that  
11 and had -- was concerned about it and  
12 wanted it presented. I remember  
13 discussing it with Mr. Hall and I  
14 believe with Mr. Ford.

15 Q How many times did you talk to  
16 -- or do you remember how many times you  
17 talked to anybody other than Sheryl  
18 Arbogast by telephone? Sheryl being one  
19 of his sisters.

20 A I don't remember.

21 Q Okay.

22 A I don't remember. I remember  
23 speaking with them long distance. It  
24 may have only been Sheryl. I don't

1 remember, but I also remember when they  
2 came into town, they were at motel rooms  
3 and speaking with them at that time as  
4 well. Of course, in addition, we had  
5 Gloria Shettles, I believe was the  
6 mitigation expert that we had asked the  
7 Court to appoint and was appointed, and  
8 she, to the best of my recollection, had  
9 spoken with them.

10 Q She had talked with Sheryl; had  
11 she not?

12 A I believe so.

13 Q And you had talked with Sheryl.

14 A I believe so, yes.

15 Q Do you know of any report that  
16 Gloria ever did where it indicated that  
17 she talked to anybody else in the family  
18 as far as --

19 A I don't recall. I mean,  
20 obviously with your questions, you're --  
21 I think you're getting at that it's not  
22 there. I don't recall.

23 Q Yeah, and I'm not trying to  
24 trick you. I just --

1 A I understand.

2 Q If you just -- whatever your  
3 best recollection is.

4 A Yeah, I really don't remember.

5 Q Okay. When we get down to the  
6 trial itself, do you remember what your  
7 theory was of how you were going to  
8 defend this man?

9 A We had -- We were worried about  
10 that. There were so many problems with  
11 any theory that we tried to develop that  
12 it seemed almost impossible to develop a  
13 fact defense based upon what occurred  
14 there. We had seriously considered the  
15 voluntary intoxication defense to  
16 nullify the intent on first degree. Mr.  
17 Hall I remember wanted us to argue self-  
18 defense, but that was -- I think would  
19 have definitely alienated the jury and  
20 inflamed them, which we didn't want to  
21 do. There was again -- The primary  
22 theory to be -- as -- from the best of  
23 my recollection this long after was that  
24 it was at least arguably a second degree

1 murder case. You know, we had the  
2 problems I remember, the telephone line  
3 being cut prior to Mr. Hall going into  
4 the house.

5 Q That was a problem, wasn't it?

6 A Absolutely.

7 Q And that was basically left  
8 naked in the record, that he had cut or  
9 disconnected those lines.

10 A That's correct. And there were,  
11 you know, numerous problems, the  
12 multiple wounds, the lack of injury, to  
13 the best of my recollection, on Mr.  
14 Hall, the evidence that he had dragged  
15 her from the house to the swimming pool  
16 and then drowned her there. It was a  
17 difficult, very difficult, case to  
18 defend.

19 Q So as I understand it, your  
20 first thought was in trying to drag it  
21 down from first degree, --

22 A Absolutely.

23 Q -- and move it down on the --  
24 down that road of lesser included.



1 A Exactly. Exactly. And if we  
2 made some headway, then, you know, who  
3 knows. But, yeah, that was the primary  
4 theory.

5 Q Okay. Did you rule out insanity  
6 at some point early on?

7 A Yeah. Mr. Hall, to the best of  
8 my recollection, did not want an  
9 insanity plea. I spoke with -- if I'm  
10 not mistaken it was Lyn Zager. Dr.  
11 Zager was the expert that had been  
12 appointed by the Court to evaluate Mr.  
13 Hall. She -- I spoke with her several  
14 times. She did a report. She made it  
15 very clear that -- And Dr. Zager is very  
16 liberal. I mean, she's -- you know,  
17 she's a capital case kind of expert.  
18 That it was not supported. It just  
19 simply wasn't supported by her  
20 interviews with Mr. Hall.

21 Q For insanity.

22 A Correct.

23 Q Okay. Going back to the part  
24 where we were talking about

1 premeditation and the phone wires.  
2 Would you agree with me that if you  
3 could have somehow ameliorated or put a  
4 salve on the fact that those phone wires  
5 were disconnected, that that would have  
6 been a big move towards getting you on  
7 past the possibility of premeditated  
8 murder and on down?

9 A No, I don't think it would have  
10 been a big step. I think it certainly  
11 would have been probably the first thing  
12 you -- you know, we would have wanted to  
13 cast doubt upon, but --

14 Q Would you agree with me that  
15 that looks sinister in and of itself?

16 A I agree with that, yes.

17 Q The wires are cut. Looks like  
18 there's some planning to do some  
19 mischief.

20 A Certainly looks like that.

21 Q Did you realize that there was  
22 testimony available that Jon had  
23 disconnected wires as a matter of course  
24 all his life when trying to talk with

1 people and had never done them any harm?

2 A I vaguely remember that  
3 assertion, I believe by Mr. Hall. I  
4 don't remember it by anyone else. I may  
5 have been told that by Sheryl Arbogast  
6 or one of the sisters. I'm not sure.

7 Q Well if you were, and let's  
8 assume for a moment you were --

9 A Yeah. I don't really distinctly  
10 remember that, though.

11 Q Can you think of a theory why  
12 you wouldn't use that, to let the jury  
13 know that he had, in fact, done that on  
14 many occasions in the past and never  
15 hurt anybody? That when he wanted to be  
16 -- when he wanted to talk with somebody  
17 and get their attention, he got the  
18 phones disconnected? I mean, you would  
19 have put that in you would have thought;  
20 would you not?

21 A Well, --

22 Q To take away the sinisterness of  
23 what it appeared to be of sneaking up  
24 there and pulling those wires off?

1 A You know, in a vacuum, yeah,  
2 that takes away some of the  
3 sinisterness. When you look at what  
4 happened out there that day, evening,  
5 and you take that away, it doesn't  
6 change things very much, quite honestly.

7 Q But it wouldn't hurt anything,  
8 would it?

9 A No, it wouldn't have hurt  
10 anything I suppose. I don't remember --  
11 It seems to me that I remember vaguely  
12 that the only reason -- the only way  
13 that we thought we could have gotten  
14 that into evidence was from Mr. Hall's  
15 testimony. I can't tell you exactly  
16 why; it's just a vague memory. Mr. Hall  
17 -- I'm not sure if he asked to testify  
18 or didn't. I believe he took the stand  
19 and said he wouldn't. I'm not sure  
20 about that. Mr. Hall's demeanor in the  
21 courtroom was very bad, very scary, and  
22 having him on the stand, strategically  
23 would have been horrible. So, you know,  
24 the only way that it could have come in

1 that I would see is if somebody else  
2 would testify to it.

3 Q And you're telling me that if  
4 you had known about that or reasonably  
5 could have, you don't know of any reason  
6 why you wouldn't have used it, to take  
7 away the sting of the wires being  
8 disconnected.

9 A Today, right now, I would say it  
10 sounds -- what you're saying sounds  
11 correct, that -- that I -- I don't -- I  
12 can't think of any reason right now why  
13 I wouldn't have used it other than I  
14 wasn't lead counsel and was admonished  
15 repeatedly not to make decisions about  
16 the case.

17 Q But if that had come to you, you  
18 would have said, "Mr. Ford, we've got  
19 this great testimony from John Doe out  
20 here that says that Jon's done this four  
21 or five times before and nobody ever got  
22 hurt." I mean, you would have let him  
23 know about it, wouldn't you?

24 A Yeah, I feel certain I would

1 have done that.

2 Q Okay. It appeared to me, and I  
3 want you to correct me if I'm wrong,  
4 that the defense put on Lyn Zager to  
5 kind of put forth the idea that this was  
6 a rage incident. Would that be fair to  
7 say?

8 A To the best of my recollection,  
9 that sounds correct.

10 Q Just to reflect -- referring to  
11 about Page 335 of Dr. Zager's testimony,  
12 she said, "It's my impression based on  
13 everything I know about the case, that  
14 Mr. Hall was acting in an impulsive  
15 manner versus a well thought out plan."  
16 Is that fair to say that that was  
17 integral to what y'all were trying to  
18 do?

19 A Yes.

20 Q Was that presented in order to  
21 take away the idea that this was  
22 premeditated?

23 A Yes.

24 Q Was it put forth with the idea

1 of even hopefully going as far as  
2 voluntary manslaughter?

3 A Yes.

4 Q Now with voluntary manslaughter,  
5 we have to have provocation; do we not?

6 A Yes.

7 Q Okay. And that provocation's  
8 got to be reasonable provocation.

9 Correct?

10 A Yes. I believe that's correct.

11 Q So in that regard, if you'd had  
12 any testimony that Billie had been  
13 violent toward Jon, you would have  
14 probably reasonably used that; would you  
15 not?

16 A You know, again, that's -- I  
17 think that my recollection again is not  
18 real specific. I can't tell you exactly  
19 what occurred back then, but I think  
20 that we're getting into the area of  
21 strategy, and I can think of reasons  
22 that we would not have tried to develop  
23 any past incidences of violence between  
24 the two of them. For example, if I may,

1 if they weren't very severe, and we  
2 tried to promote or imply that Mr.  
3 Hall's conduct was reasonable, you know,  
4 strategically I think we're looking at  
5 the jury, trying to convince them that  
6 what he did that day was reasonable in  
7 light of the provocation, and I think  
8 that would have been impossible. So,  
9 yeah, you know, you want to move  
10 downward. You want to move down past  
11 second degree and get voluntary, but  
12 realistically, I mean, come on. There  
13 was no chance.

14 Q Well I understand. In the  
15 record, there really wasn't -- and you  
16 correct me if you remember differently  
17 -- there really wasn't anything about  
18 any evidence about provocation, was  
19 there?

20 A I believe that's correct, yes.  
21 I think the only -- again, the only  
22 person that could have -- could have  
23 stated that would have been Mr. Hall,  
24 and he would have had to have taken the



1 stand.

2 Q And if you'd have had anybody  
3 else that would have said that she was,  
4 in fact, violent toward him on past  
5 occasions, you would have at least  
6 considered using it, wouldn't you?

7 A Would have considered it.

8 Q As you're standing on the stand  
9 right now, you don't know of any. Is  
10 that fair to say?

11 A Yeah, as of right now I don't  
12 know. I don't recall specifically. I  
13 do remember, and I think it came from  
14 Mr. Hall, but I remember the idea that  
15 they had been into fights before. I  
16 don't remember it ever being very  
17 severe, and I don't remember  
18 specifically where that came from. I  
19 thought it was Mr. Hall, but it's  
20 possible that it came from other sources  
21 as well.

22 Q I was curious. You had Lyn  
23 Zager. She was a psychologist, wasn't  
24 she?

1 A Yes.

2 Q Did it ever -- And you did have  
3 plenty of evidence that Jon had this --  
4 this burst of rage or something of that  
5 nature; did you not?

6 A Yes.

7 Q And Gloria Shettles, in one of  
8 her reports in 1995, she mentions  
9 intermittent explosive disorder. Did  
10 you ever pursue that?

11 A Pursue it. I remember that now  
12 that you say it, intermittent explosive  
13 disorder. I can't tell you if we  
14 pursued that or not. I feel confident  
15 that we did, but I'm not sure how or to  
16 what degree we did.

17 Q Okay.

18 MR. BUCHANAN: Can I have just a  
19 second, Your Honor?

20 Q Well, were you familiar back in  
21 1996 with -- were you -- did you do any  
22 research or reading up on intermittent  
23 explosive disorder?

24 A I don't recall.

1 Q In any of your seminars, had you  
2 been told that it was an up and coming  
3 thing, so to speak, and that there were  
4 serotonin levels that could be taken on  
5 the person and things of that nature?  
6 Were you familiar with any of that?

7 A I don't recall that. I don't  
8 recall that. I mean, I believe that I  
9 did do some looking into it. I vaguely  
10 seem to remember that. I don't remember  
11 the serotonin level studies.

12 Q 'Cause you realize that inter-  
13 -- or do you realize that intermittent  
14 explosive disorder is something that  
15 plays right into voluntary manslaughter  
16 in terms of the elements of voluntary  
17 manslaughter? You didn't understand  
18 that; did you not?

19 A Plays right into it.

20 Q Consistent with it.

21 A You know, I don't want to say I  
22 don't -- I don't agree with that. I  
23 don't think I have enough information or  
24 enough recollection right now to respond

1 to that accurately. Maybe if you  
2 rephrase the question I could do better.

3 Q Well I'm interested, what  
4 tactical reason was there not to seek  
5 the services of a psychiatrist?

6 A Well --

7 Q And the reason I say that is  
8 since -- I don't know if you knew it or  
9 not because -- I'm not being critical.  
10 I know it's five or -- five plus years  
11 ago, but if you're into the serotonin  
12 level thing where you're going to have  
13 medical doctors do invasive things into  
14 a person's body, why would you not seek  
15 the help of an M. D. psychiatrist as  
16 opposed to relying on people that can't  
17 even prescribe drugs?

18 A Well, like I said to begin -- or  
19 in response to your last question, the  
20 serotonin level studies, if there are  
21 any, and I'm assuming that what you  
22 propose in your questioning is true,  
23 that if that existed, I don't recall  
24 ever coming across that specifically. I

1 don't recall that. It's not to say I  
2 didn't.

3 Q Now, --

4 A Yeah, you know, a psychologist  
5 is not an M. D., obviously; a  
6 psychiatrist is. Tactically why I  
7 wouldn't have at least suggested that we  
8 -- we try to get a psychiatrist as  
9 opposed to a psychologist, I suppose the  
10 only answer I can give to that today  
11 with my recollection is that Mr. Hall, I  
12 recall, didn't want to. He specifically  
13 did not want to argue insanity or --  
14 but, you know, when you're talking about  
15 as it plays into voluntary manslaughter,  
16 you know, --

17 Q No, I --

18 A -- you have a hard time with  
19 that one, but I guess you can --

20 Q And where I wanted to lead this  
21 is that, as best you can remember, you  
22 and Gloria at least had some  
23 conversation about it, and I think what  
24 you're telling me is that for whatever

1 reason, you don't remember going much  
2 past that. Is that fair to say?

3 A That's -- To the best of my  
4 recollection, that's correct.

5 Q Do you know of any downside or  
6 any reason strategically why you  
7 wouldn't have asked for a psychiatrist  
8 in the capital murder case?

9 A I don't even recall whether --  
10 that necessarily we didn't. I'm  
11 assuming we didn't, that it's in the  
12 record, or you wouldn't be asking me  
13 these questions, so --

14 Q Well I can't find it. If you  
15 tell me there is, I'd look -- you know,  
16 I'd look through it, but --

17 A No, I don't remember. I don't  
18 remember ever seeking a psychiatrist.

19 Q Can you think of a good reason  
20 in a death penalty case why you wouldn't  
21 get the -- Would you agree with me that  
22 in the food chain of the world of  
23 shrinkdom, that the psychiatrist kind of  
24 sets atop the food chain? With maybe

1 the psychologist being a little bit  
2 below.

3 A You know, I wouldn't agree with  
4 that. I know where you're coming from.  
5 Medically speaking I would agree with  
6 that. One's a physician and one's not.  
7 But the inner-workings of the mind and,  
8 you know, understanding theories and how  
9 people react to their past or what's  
10 occurring, I think probably  
11 psychologists are better with that than  
12 psychiatrists are. To my -- My  
13 experience with psychiatrists is that  
14 they are a lot more apt to look at  
15 somebody and prescribe medicines and not  
16 get down to the root, and they are going  
17 to refer those people to counselors or  
18 psychologists to deal with the real  
19 issues.

20 Q Do you agree with me that it's  
21 the lawyer that has the responsibility  
22 of getting the social history together  
23 for his experts? I mean, isn't that the  
24 reason you have a Gloria Shettles?

1 A Well, yeah, you have her to  
2 develop it as well.

3 Q So that she can compile the best  
4 history possible to give to your  
5 psychiatrist or psychologist or whoever  
6 to get to the bottom of the problem with  
7 the Defendant, if there is one. Would  
8 that be a fair summation of why you hire  
9 these people?

10 A Well not exclusively, no.

11 Q Well, that and to find great  
12 evidence for you obviously, but --

13 A Yeah, and mitigation evidence.  
14 I mean, are you asking in regards to a  
15 fact defense or mitigation defense?

16 Q Well, as I understand it, a  
17 mitigation expert kind of walks both  
18 those lines because --

19 A Yeah.

20 Q And you'd agree with me; would  
21 you not?

22 A Yeah, I would.

23 Q Because what they do is go out  
24 and just talk to everybody they possibly



1 can that had some dealings, or  
2 peripheral dealings, with the Defendant  
3 so that they can compile the social  
4 history, and a lot of it's useful, a lot  
5 of it's not, but -- fair to say?

6 A Uh-huh, it is.

7 Q You pass on the most that you  
8 can to your psychiatrist, and if you can  
9 fish a little out of it to help you on  
10 guilt or innocence or on punishment, you  
11 fish that out. Is that a fair way to  
12 say the way you would use it?

13 A Yeah, I agree with that.

14 Q Okay. So you had Gloria  
15 Shettles, and you know of no reason why  
16 you wouldn't be using everything that  
17 she would give you. Correct?

18 A Right. That's correct.

19 Q And, you would have forwarded --  
20 or you would have thought you would have  
21 forwarded it to Ms. Zager; would you  
22 not? If she had done all her work and  
23 you had forwarded that to her in part of  
24 the social history; would you not?

1 A I suppose so. If she wasn't  
2 aware of it, if it was something new  
3 that hadn't already been accounted for,  
4 I can think of no reason that we  
5 wouldn't have forwarded it.

6 Q I notice that in the punishment  
7 phase there was a lot of talk about Jon  
8 growing up in a house where there was a  
9 lot of fighting. I suppose that was  
10 something y'all wanted to try to put on  
11 as evidence.

12 A Yes.

13 Q But I also noticed that there  
14 wasn't much good about Jon, being a good  
15 father and things like that. Was there  
16 any reason why you would ignore evidence  
17 of him being a good guy?

18 A No reason. It's got to be  
19 there, though.

20 Q Okay.

21 A I don't recall anyone coming  
22 forward or ever anyone being found that  
23 would say things that were that positive  
24 that didn't also have negative things to

1 say. I mean, that's always what you  
2 look at, is after cross-examination, is  
3 this going to be effective at all, is  
4 the good going to outweigh the bad.

5 Q Would you agree with me that  
6 somebody that might say something bad  
7 about your client at first, if you spend  
8 a little time with them, you can find  
9 out that maybe they come around and give  
10 you a whole lot of good?

11 A Sometimes.

12 Q That plays directly into how  
13 much time you spend with them. Would  
14 that be fair to say?

15 A With the witness?

16 Q Uh-huh. You or your  
17 investigator.

18 A Yes. It's not necessarily so,  
19 but, yes, that certainly occurs. If you  
20 spend more time and try to cut  
21 underneath the antagonism or the bad  
22 feelings, you may find some good  
23 feelings there as well, or some good  
24 evidence as well.

1 Q You wouldn't consider it  
2 sufficient in a death penalty case to  
3 walk up to a witness that says, "I ain't  
4 got nothing to say good about Jon. I  
5 don't want to talk to you. I mean, I'll  
6 talk to you, but I ain't got nothing  
7 good to say about Jon." It's not  
8 appropriate to just turn around and say,  
9 "Well, okay. See you later," is it?

10 A Well, if we're supposing that  
11 the witness says, "Yes, I will talk to  
12 you, but I don't have anything good to  
13 say about Jon," you know, it's possible  
14 that a long-term sit-down with that  
15 person might produce some positive  
16 things about him. In a best case  
17 scenario, that's possible.

18 Q Okay. Any reason why you  
19 wouldn't put in some pictures of Jon  
20 being a father or being something less  
21 than a monster? I notice there were no  
22 pictures put in the record. Was that a  
23 strategy?

24 A I don't even recall that. I do

1 seem to recall we didn't put any  
2 pictures in. I don't recall there -- I  
3 don't recall that. I don't know if we  
4 decided not to, if we didn't have the  
5 pictures or what. I really don't.

6 Q Was there any -- If you had had  
7 people that knew Jon intimately all his  
8 life that could have testified that from  
9 everything they had ever seen of Jon and  
10 Billie that they knew of no reason or  
11 had ever seen him exhibit anything that  
12 would lead them to think that he would  
13 be premeditatedly plotting to kill her,  
14 would you have used that?

15 A Well, --

16 Q Again, take it out of first  
17 degree and try to shove it on down the  
18 road.

19 A You know, that depends. It  
20 depends on what else that witness knows.  
21 It depends on what cross-examination  
22 could produce from that, what kind of  
23 evidence can come in if somebody opens  
24 the door on that. If somebody gets up

1 there and says, "I've never known that,"  
2 what can a prosecutor do to them at that  
3 point? "Have you heard about this? Did  
4 you know about that? Did you know about  
5 this? Did you know about the time he  
6 did this?" You know, do you want to  
7 strategically put somebody on if the  
8 prosecutor is going to be able to just  
9 slice them apart and get in even  
10 possibly more evidence than they could  
11 have gotten in to begin with? I can't  
12 say either way, you know.

13 Q Okay. Well my question then in  
14 this case is: Do you ever remember  
15 saying, "Well, you know, I've got a  
16 sister or two that can say that they've  
17 never seen him exhibit anything that  
18 would lead him to believe he'd do that,  
19 but I --" Do you remember ever  
20 thinking, "I don't want to put them on  
21 there for some particular downside"?

22 A I don't remember. I remember at  
23 some point offering an offer of proof on  
24 one of the sisters. I think it was

1 Sheryl Arbogast's testimony. Judge  
2 LaFon wouldn't allow it in. You know,  
3 this was a struggle for me with Judge  
4 LaFon throughout this trial. He and I  
5 were on good terms before and after, but  
6 we did not get along during this trial,  
7 and I had a difficult time.

8 Q I think the record reflects that  
9 was what -- she was trying to get in  
10 what Jeff had said.

11 A What Jeff had said? Was that --  
12 Okay.

13 Q It was addressed on appeal,  
14 also, just to refresh your memory.

15 A Okay, well thank you. Yeah.

16 Q Do you know of any reason in the  
17 world why you wouldn't have asked her,  
18 you know, "Anything in your past, your  
19 dealings with Jon, that would lead you  
20 to believe that he would ever  
21 premeditatedly hurt this woman?" If she  
22 would have been willing to tell you no,  
23 do you know of any downside to using her  
24 in that way?

1 A Cross-examination by the  
2 prosecution.

3 Q What would they have had that  
4 would have hurt you as opposed to  
5 leaving the premeditated phone wire  
6 setting there being cut in the record  
7 with no rebuttal, no nothing? I mean,  
8 what --

9 A You know, there were a lot of  
10 instances of violent behavior by Jon  
11 towards Billie that I think that -- To  
12 the best of my recollection, Mr. Woodall  
13 and I believe Mr. Earls tried the case,  
14 Mr. Woodall and someone anyhow, an  
15 assistant. I think it was Mr. Earls.  
16 Didn't use simply because they had such  
17 a good case they didn't need it. But I  
18 can imagine testimony of, for example,  
19 damaging cars, running into her car with  
20 the children inside the car. So if we  
21 put her up there and say he's a good dad  
22 and then, boom, here they come after  
23 her. "Did you know that he slammed her  
24 car with the children inside? Did you



1 know he did this?" So, yeah, there were  
2 things in the file that weren't in the  
3 record yet that we did not want in and  
4 that could have been asked on cross-  
5 examination, depending on what we asked  
6 her, obviously. I see what you're  
7 saying, and, you know, you got a point  
8 there, but --

9 Q Well you'd have to know about it  
10 first before you apply that test to it.  
11 Right?

12 A Sure. Yeah, you'd have to know  
13 about what they had. That's correct.

14 Q And then -- But we're still in  
15 agreement that we don't really see -- if  
16 we could have found any downside  
17 explaining those phone wires had been  
18 done like that in the past and nobody  
19 had been hurt. We're still in agreement  
20 on that one; are we not? That if you  
21 could have found that testimony, there's  
22 not a -- Well, "You don't know of any  
23 times --" or, "Were you familiar with  
24 the time he did cut the phone wires and

1 hurt somebody?" I mean, there's nothing  
2 like that --

3 A I don't -- You know, quite  
4 honestly, I don't see why that helps so  
5 much.

6 Q I thought we agreed that it  
7 looked pretty sinister to have those  
8 phone wires off there.

9 A It does.

10 Q I thought we also agreed that if  
11 we could explain that he had done that  
12 in the past and never hurt anybody, that  
13 that was just his way of directing your  
14 attention, that that would at least take  
15 some sting out of it. Are we in disa-  
16 -- And you're free to disagree with me.  
17 Don't get me wrong, but I thought we  
18 were in agreement on that. Would you --  
19 Are we not in agreement on that?

20 A That it would take some sting  
21 out if you could produce someone that  
22 said he'd done this before to get the  
23 attention of the person that was, for  
24 example, inside the house. You know, I

1 don't know how to answer that right now.  
2 You know, sting out of it or -- You  
3 know, I get your drift.

4 Q Well I guess what I'm asking,  
5 can you see a downside in using it all?  
6 I mean, you had said that the reason you  
7 wouldn't use the --

8 A Well, you know, it paints a  
9 picture of someone who is on the edge?  
10 Someone is going around to other people  
11 cutting their phone lines just so he can  
12 have their attention? I don't know how  
13 that's really that helpful. And on this  
14 particular occasion, arguably,  
15 conviction-wise, he kills them and on  
16 the other occasions he didn't actually  
17 kill them?

18 Q And didn't even actually hurt  
19 them.

20 A I don't see why that helps so  
21 much.

22 Q No, I mean, didn't even actually  
23 hurt them.

24 A Yeah. But still, it looks like

1 someone who has got --

2 Q Yeah, but don't -- And I don't  
3 want to get into a long diatribe here,  
4 but --

5 A All right.

6 Q -- did we not agree that leaving  
7 it in the record like it was looked very  
8 sinister, that it was a cold, calculated  
9 act to get her away from any emergency  
10 help, et cetera, et cetera?

11 A I agree it looks sinister. I  
12 think it looks sinister doing it without  
13 ever hurting anybody, too.

14 Q I understand, but if you don't  
15 -- if you do it in the past and you're  
16 not hurting anybody --

17 MR. EARLS: Your Honor, we're  
18 getting argumentative now. This  
19 question's been hashed out thoroughly.

20 THE COURT: I agree, Mr.  
21 Buchanan, it is getting to the point of  
22 argument, because I heard him several  
23 times say that it looked sinister, and  
24 you're being repetitive and getting to

1 the point of arguing with the witness.

2 MR. BUCHANAN: All right.

3 THE COURT: Let's move along.

4 Q Were you the attorney that  
5 handled the change of venue hearing?

6 A I don't recall that. Change of  
7 venue hearing.

8 Q Yeah. I got another question I  
9 guess while I'm at it. Do you know why  
10 there was any -- There's no change of  
11 venue hearing that was ever typed up.  
12 There was no opening argument that was  
13 ever typed up, no closing argument that  
14 was ever typed up. Was there any theory  
15 that that was a good idea not to do  
16 that?

17 A Not to have an opening or  
18 closing argument --

19 Q In a capital murder case not  
20 typed up for the record?

21 A Typed up. The question is not  
22 to have it typed up or not to have it  
23 period?

24 Q Not to have it transcribed so

1 that it could be looked upon later for  
2 purposes of appeal and things of that  
3 nature.

4 A I don't know why that -- If that  
5 occurred, I don't know why it would have  
6 occurred.

7 Q You can't think of a reason off  
8 the top of your head that it would be  
9 strategically good to not type up as  
10 much of the record as possible, can you?

11 A For appeal I assume we're  
12 talking about, obviously.

13 Q Yes.

14 A Post-conviction relief, et  
15 cetera. No. No, I can't think right  
16 now of a good reason for that.

17 Q Okay.

18 A And the venue as well.  
19 Honestly, I don't even recall a venue  
20 hearing.

21 Q Okay. Do you remember at the  
22 trial that Jon was objecting that he was  
23 -- he made some kind of reference to the  
24 fact that he was in the wrong court

1 because he had never agreed to a venue  
2 change?

3 A I don't recall that. I'm not  
4 saying he didn't do it. I just don't  
5 recall that.

6 Q Do you remember having any  
7 discussions with him about venue and  
8 change of venue?

9 A Don't recall it. You know, I'm  
10 not saying I didn't, but I handled a lot  
11 of cases then and continue to, and this  
12 is Mr. Hall's only case, so ... I don't  
13 remember Mr. Hall making it clear to me  
14 that he did not want this trial to occur  
15 in Madison County prior to the trial.  
16 If he said it on the record at trial,  
17 you know, he may have.

18 Q Okay.

19 MR. BUCHANAN: May I approach,  
20 Your Honor?

21 THE COURT: Certainly.

22 Q I want to show you what's been  
23 marked Exhibit 5 and give you a chance  
24 to look it over, and then I'll ask you a

1 couple of questions about it.

2 A Okay, I've reviewed it.

3 Q Do you know of any reason why  
4 you didn't attempt to tender that into  
5 evidence at the trial itself?

6 A This document itself here.

7 Yeah, I don't remember right now, you  
8 know, why we didn't do it. In reading  
9 it now, I see problems with it, trying  
10 to introduce it, but --

11 Q But you don't know why there  
12 wasn't a try made.

13 A Well, what I'm saying is that, I  
14 don't specifically remember, back when  
15 the trial occurred, making a decision  
16 not to try to introduce this, you know,  
17 the reasons we would have. But as I  
18 review it, I can think of a couple of  
19 reasons why we may have decided not to  
20 do it, for what that's worth.

21 Q Well, to take you off the hook  
22 for a minute, Jeff died in I believe  
23 July of 1995, which was before you got  
24 the case.



1 A Uh-huh.

2 Q Had you had the case in -- from  
3 the beginning, let's say, July of '94,  
4 if you have a witness that's going to  
5 die, you know they're dying of AIDS, for  
6 instance, or cancer or something, you  
7 know they're not going to make it to the  
8 trial, is there any reason in the world  
9 why you don't try to preserve that  
10 testimony?

11 A I can't think of any reason why  
12 you wouldn't try to preserve it.

13 Q Okay.

14 A You know, right now I can't.  
15 Like you -- You know, like you said, I  
16 wasn't his attorney at that time. I  
17 don't know if the attorneys at that time  
18 spoke with him and decided there wasn't  
19 anything there. I don't know.

20 Q Okay. But you would agree with  
21 me, once he dies, --

22 A In theory.

23 Q -- it's virtually gone.

24 A Yeah.

1 Q And it would be equally, or even  
2 at least as negligent, if you knew that  
3 he had something out there and you sat  
4 around and didn't get it done knowing he  
5 was dying. That would be just flat-out  
6 negligence; would it not? And again,  
7 you weren't the lawyer, but I'm asking  
8 you for a legal opinion.

9 A If you knew that there was --  
10 that he had positive or exculpatory  
11 information, knew that he was going to  
12 die. Yeah, it'd at least be close to  
13 negligence if you didn't try to preserve  
14 it, again, if you knew that it was  
15 exculpatory.

16 Q And it's just that much more  
17 important in a capital case than it  
18 would be in a burglary. Correct?

19 A I agree.

20 Q Maybe I didn't make myself  
21 clear, but when I say exculpatory, maybe  
22 even you said exculpatory, at this point  
23 I can't remember who says what, but when  
24 we're talking exculpatory, we're not

1 necessarily talking about testimony that  
2 proves he didn't do it, or tends to show  
3 he didn't do it, but testimony that  
4 would mitigate it perhaps down to second  
5 degree, voluntary, things of that  
6 nature. That also is considered  
7 exculpatory, at least as far as you and  
8 I are talking. Is that fair to say?

9 A Yes, as long as -- Again,  
10 though, if Jeff Hall -- you know, if  
11 Jeff Hall were to say, "I know Jon  
12 didn't do it because he just would have  
13 never done anything like that, and I  
14 know he acted under provocation," and  
15 the attorneys at that time spoke and  
16 they said, "Well what provocation?"  
17 "Well I don't know. I just know Jon,  
18 and he would have had to have been  
19 provoked," you know, that's not what I  
20 would consider worth -- or I don't know  
21 that I wouldn't try to preserve that  
22 anyhow, but I don't know if I'd call it  
23 negligence not to.

24 Q Well let's back up one more

1 step. To be told that that's there and  
2 not even talk to Jeff probably is  
3 negligence, isn't it?

4 A To be told that he possesses  
5 that type of information --

6 Q And know that he's dying.

7 A And know that he's dying.

8 Q And not even talk to him.

9 A And not know what he's going to  
10 say. Not having anybody else that's  
11 talked to him and made a determination,  
12 this really isn't even good.

13 Q Right.

14 A Oh, yeah, you should have talked  
15 to him. The attorney should have talked  
16 to him.

17 Q Do you remember having a  
18 conversation with Jon about the  
19 positives and negatives of him  
20 testifying?

21 A Not distinctly, but I'm sure we  
22 did.

23 Q 'Cause it said in the record --  
24 there's some statement that the Judge

1 finds that he's been fully briefed. Do  
2 you remember what you told Jon regarding  
3 the negatives and the positives of him  
4 testifying?

5 A I don't remember. All things  
6 considered, it would have been a  
7 catastrophe to have him testify at that  
8 time, you know, not just cross-  
9 examination but his demeanor, his  
10 attitude, his lack of remorse. It would  
11 have been horrible. Now, knowing the  
12 result that occurred anyhow, I suppose  
13 you could argue it didn't -- you know,  
14 it wouldn't have hurt anything, but at  
15 the time we were hoping for better than  
16 we got.

17 Q Well there's a lot of stuff  
18 actually in your file that -- some of  
19 which I'm assuming you forwarded to Lyn  
20 Zager, that showed he did have quite a  
21 bit of remorse, wasn't there?

22 A But not at trial. By the time  
23 we were in that courtroom, Mr. Hall was  
24 on the verge of a violent outburst all

1 the time, and had a couple and was taken  
2 out of the courtroom in shackles, had  
3 guards posted behind us.

4 Q He was angry at the proceeding,  
5 but did he ever stop and say, "I no  
6 longer have any remorse about Billie  
7 dying"?

8 A No. No, he didn't say that.

9 Q He pretty much has maintained  
10 from day one that he never intended to  
11 kill her; did he not?

12 A I think that's fair.

13 Q And that he truly -- he broke  
14 down and cried when he first heard she  
15 was dead. You do remember that, don't  
16 you?

17 A I don't remember that.

18 Q Do you remember him expressing  
19 remorse to you that he never intended to  
20 kill her and that he felt bad that she  
21 was, in fact, dead?

22 A I remember Mr. Hall saying he  
23 never meant to kill her, or at least  
24 implying that in our conversations. I

1 don't remember -- again, a judgment call  
2 I guess -- any sincere remorse. I mean,  
3 you know, to be quite honest, Mr. Hall  
4 seemed to be narcissistic in the  
5 extreme. I was amazed that Dr. Zager  
6 didn't find out something, quite  
7 honestly. I -- You know, I know with  
8 the guidelines that you had to work  
9 with, the law at that time, she was  
10 limited, but Mr. Hall was difficult and  
11 --

12 Q You were surprised -- I can't  
13 tell you how much I would agree with  
14 you, having represented him myself.

15 A Yeah, you know what I'm talking  
16 about.

17 Q Exactly. If you -- If somebody  
18 came back and told me Jon was a normal  
19 human being, I'd go, "You obviously  
20 haven't spent much time with him." So  
21 you were shocked, or at least you were a  
22 little baffled as to her coming back and  
23 not being able to help you more.

24 A Yes. And I know what you would

1 say or the questions of why we didn't  
2 get a psychiatrist to look at the  
3 serotonin.

4 Q That would be my next question.

5 A Again, we already -- I don't  
6 know that we didn't ask for another  
7 independent evaluation. We may not  
8 have. I don't remember asking for it.  
9 I'll say that as well.

10 Q I don't see it anywhere in the  
11 record, too, for whatever that's worth.

12 A I remember Mr. Hall did not want  
13 to proceed with that defense. He wasn't  
14 interested in that.

15 Q Insanity.

16 A Right. Said he wasn't.

17 Q But we've already agreed, as far  
18 as you know, there was never any  
19 investigation or going down the road on  
20 IED.

21 A Right.

22 Q That you remember.

23 A Right. That's right. And again

24 --



1 Q And you don't remember asking  
2 for a psychiatrist to try to do the  
3 serotoninins and whatnot that might have  
4 been necessary to do that.

5 A That's correct.

6 Q And again, correct me if I'm  
7 wrong, you don't know of any reason why  
8 you wouldn't have, other than Mr. Hall  
9 didn't want to be known as an insane  
10 person.

11 A Well, you know, the -- you know,  
12 there's a fine line of I guess the  
13 dynamics of what was going on and what  
14 you've experienced as well as I've  
15 experienced in meeting with Mr. Hall.

16 Q Yeah. If you in good faith  
17 thought he was truly insane, you  
18 wouldn't have cared what he said. You'd  
19 have tried to --

20 A Yeah.

21 Q -- beat that bush as hard as you  
22 could.

23 A That's exactly right. And I  
24 guess the bottom line is, I really

1 didn't think he was insane. I thought  
2 he was mean as hell, I mean, quite  
3 honestly. That did not influence the  
4 way I prepared for the case or the way I  
5 tried the case. I did everything I  
6 could for him, but Mr. Hall seemed like  
7 a five-year-old brat in an adult's body  
8 that, you know, wanted to run the show  
9 from start to finish and --

10 Q Well, is it --

11 A -- didn't exhibit any real  
12 remorse. I mean, you know, he -- I'm  
13 not saying he didn't say, "I'm sorry,"  
14 but -- so, yeah, it was hard to decide  
15 exactly what was going on, but I didn't  
16 see insan- -- you know, the crazy  
17 insanity.

18 Q Would it be fair to say that you  
19 had come to a point where you really  
20 didn't like him very much?

21 A Yeah, that'd be fair to say.

22 Q And while you try not to let  
23 that color anything, you'd at least tell  
24 me he was one of the least pleasant

1 people you had to deal with through the  
2 day.

3 A For the most part, yeah. You  
4 know, there were times he and I  
5 discussed things that we weren't arguing  
6 about them, but Mr. Hall was difficult  
7 to deal with and was --

8 Q But your testimony is also that  
9 you would have never let that stop you  
10 from --

11 A Absolutely.

12 Q -- fully investigating a solid  
13 defense that might have been available.

14 A That's correct. Yes.

15 Q At least you wouldn't have  
16 knowingly let that interfere.

17 A Yes. I mean, you know, you're  
18 in this business. I represented a lot  
19 of people, especially when I did a lot  
20 of appointed work at the beginning, that  
21 I may not have liked personally, but a  
22 lot of them had been found not guilty  
23 because I did them such a good job,  
24 whether I liked them or not.

1 Q Correct, okay. You tried not to  
2 let it color you in any way.

3 A That's correct.

4 MR. BUCHANAN: Your Honor, may I  
5 have just a moment with Mr. Ellis?

6 THE COURT: Yes.

7 MR. BUCHANAN: Your Honor, may  
8 we approach?

9 THE COURT: Certainly.

10 (There was a conference  
11 at the bench as follows:)

12 MR. BUCHANAN: Your Honor, we  
13 have something we'd like to ask him in  
14 chambers because I have no desire  
15 whatsoever to ask that with the  
16 newspaper and everybody else in here,  
17 and yet I've got some indication if I  
18 don't ask it, I think I'm dropping the  
19 ball in his -- dealing with substance  
20 abuse on his part, and that's not a  
21 question I want to ask. I don't know  
22 him from Adam, but I have no ill will  
23 toward him nor any desire to do him  
24 harm. I would love to do that in

1 chambers just so that the federal boys  
2 can't say, "Well why didn't you --" "I  
3 asked him, that's all, you know --" I  
4 have no idea what he's going to answer,  
5 but it's all over my file about rumors.

6 MR. EARLS: I don't see how it's  
7 connected to the hearing. If he wants  
8 to try and lay some foundation for it,  
9 how it had something to do with this  
10 case, but --

11 MR. BUCHANAN: If he says it  
12 wasn't a problem for him during that  
13 case, then I'm going to drop -- I'm not  
14 going to go beat him up.

15 THE COURT: Why can't we just  
16 approach him and ask. The court  
17 reporter is able to approach, and just  
18 ask it now and get it over with.

19 MR. BUCHANAN: Just over there  
20 in front of him quietly?

21 THE COURT: Yes.

22 MR. BUCHANAN: Okay.

23 THE COURT: Counsel wanted to  
24 ask you questions about substance abuse,

1 and rather than just do it in open  
2 court, I'm going to let him just ask you  
3 here, and we'll move on from there. I  
4 just feel like that is the proper way.

5 THE WITNESS: Whatever Your  
6 Honor says.

7 THE COURT: If you're  
8 comfortable with that, I am.

9 THE WITNESS: Sure.

10 THE COURT: Just go ahead, Mr.  
11 Buchanan.

12 Q Mr. Mayo, I asked that we do it  
13 this way because I have no desire to  
14 make this anything, but it's all over my  
15 file and I have to ask you.

16 Did you have a substance abuse  
17 problem during this period of time, 1996  
18 to 1997?

19 A You know, those are very  
20 difficult questions. That's a very  
21 difficult question to answer. In  
22 retrospect, I would say that I was an  
23 alcoholic during that time period, but,  
24 you know, certainly a functional one. I

1 think we've got a huge portion of our  
2 bar that are, but I decided to do  
3 something about it as opposed to most  
4 people who don't. At that time, though,  
5 substance abuse? No. I became addicted  
6 to pain pills in the fall of 1998 after  
7 a motorcycle wreck. That's what led me  
8 to the point of realizing that, yeah, I  
9 was addicted to substances. Now as I  
10 worked my way through it, looking back  
11 over the course of my life, what I  
12 learned about the disease of alcoholism,  
13 I would say that, yes, I probably was.  
14 Now during the trial, no. I never came  
15 to court under the influence. Even at  
16 my worst I never did. I was not what  
17 you -- You know, I know so much about  
18 this stuff, I could sit here and talk to  
19 you for hours about it. So maybe you  
20 just ought to ask me questions.

21 Q I guess I'm asking you this from  
22 the standpoint of kind of covering  
23 myself. You've been in the position --

24 A I understand.

1 Q You don't feel that any time you  
2 ever performed any duties in this case  
3 with any substance, be it legal or  
4 illegal, interfering in any way?

5 A No. I never drank in the  
6 morning. I never did drugs, you know,  
7 other than those as -- you know, as I  
8 went along but never when I was in  
9 court. I was always able to postpone it  
10 until afterwards. And during this  
11 trial, I distinctly remember not doing  
12 anything because after it was over, I  
13 remember getting drunk that night  
14 because I was so upset that he got the  
15 death penalty, quite honestly. As much  
16 as I didn't like him, I still didn't  
17 want him to get the death penalty.

18 MR. BUCHANAN: I'm happy with  
19 that, Judge. That's fine.

20 THE COURT: Mr. Earls, any  
21 questions?

22 MR. EARLS: Did intoxication and  
23 drugs -- they had no affect on your  
24 ability to try this case?



1 THE WITNESS: None whatsoever,  
2 none on my ability to try any case that  
3 I ever tried.

4 MR. EARLS: That's all I have.

5 THE COURT: Thank you. Counsel  
6 may have other questions for you.

7 (End of conference at  
8 the bench.)

9 Q I myself get a little punchy at  
10 this point, but I did want to ask you:  
11 Do you remember any of the conver- --  
12 did you tell me earlier you don't  
13 remember ever having a confrontation or  
14 a memorable conversation with Jon  
15 regarding the change of venue, getting  
16 him to sign an affidavit agreeing to it  
17 or not agreeing to it or anything like  
18 that? Do you remember anything about a  
19 sit-down with Jon on the change of  
20 venue?

21 A I don't remember that. I'm not  
22 saying it didn't occur. I just don't  
23 independently remember that. It seems  
24 like that Mr. Ford had more to do with

1 the venue than I did, but -- and I don't  
2 know why I say that. For one thing, he  
3 was lead counsel. For another, I seem  
4 to remember that he was really strong  
5 about the change of venue. He really  
6 wanted it out of Henderson County.

7 Q Mr. Ford did?

8 A Yes. I believe that's correct.  
9 And, you know, as far as my personal  
10 feelings or my meetings with Mr. Hall  
11 and any memorable conversation I had  
12 with him, I don't recall that.

13 Q All right.

14 MR. BUCHANAN: We want to pass  
15 the witness at this time, Your Honor,  
16 subject to further ...

17 CROSS-EXAMINATION

18 BY MR. EARLS:

19 Q Mr. Mayo, in your preparation of  
20 this case, did you come across any  
21 witness who would give evidence at trial  
22 of any provocation in this matter?

23 A I don't recall ever receiving  
24 any information like that. I don't

1 remember anybody else that -- I mean,  
2 nobody else was there, first of all, and  
3 I don't remember being told by anyone  
4 that they knew distinctly that there was  
5 provocation.

6 Q Isn't it true that everyone who  
7 was there testified other than Mr. Hall?

8 A That's correct.

9 Q Now, I'll hand you a document as  
10 part of the court's record and ask if  
11 you remember that.

12 A Yes.

13 Q Okay. Is that document a  
14 letter?

15 A Yes. The first two pages of it  
16 are a letter to Judge LaFon from Larry  
17 Southard, Director of Forensic Services  
18 at Middle Tennessee Mental Health  
19 Institute.

20 Q Basically, in a nutshell, that  
21 letter says that he's competent and  
22 insanity can't be supported.

23 A That's correct.

24 Q You also had the services of Dr.

1 Zager. Is that right?

2 A That's correct.

3 Q And, there was an individual who  
4 also testified at the sentencing hearing  
5 other than those two. Is that correct?

6 On behalf of Mr. Hall, another  
7 psychologist. Well, the record speaks  
8 for itself.

9 A Yeah, I don't -- I'm sorry.  
10 Other than Dr. Zager and other than  
11 someone from mental health, I'm not  
12 sure.

13 Q Mr. Mayo, obviously hindsight's  
14 20/20, isn't it?

15 A Uh-huh. That's correct.

16 Q When you're preparing for this  
17 case, there are a lot of potential  
18 defenses until you eliminate them.  
19 Right?

20 A Absolutely. That's correct.

21 Q One of which may be this  
22 intermittent explosive disorder. Is  
23 that right?

24 A That's what I understand, yes.

1 Q But based upon your study of the  
2 case file, discussions with the doctors  
3 and your reliance upon the determination  
4 by the Middle Tennessee, you determined  
5 that insanity wasn't a defense.

6 A That's correct.

7 Q Now, did you discuss all this  
8 with Jon Hall?

9 A Yes.

10 Q And you discussed other  
11 defenses; did you not?

12 A Yes.

13 Q And I think you testified one of  
14 the other was intoxication.

15 A Correct.

16 Q The other one, I think that --  
17 the way you decided to go with this was  
18 try to mitigate it down to second degree  
19 or a lesser included.

20 A Correct.

21 Q All that was discussed with Mr.  
22 Hall.

23 A Yes.

24 Q And the decision was ultimately

1 made. Is that right?

2 A Correct.

3 Q Based upon everybody's  
4 understanding of the facts of the case.

5 A That's correct as well.

6 Q What experts you had.

7 A Uh-huh, yes.

8 Q And Mr. Hall was part of that.

9 A Yes. To the best of my  
10 recollection, Mr. Hall wanted not  
11 guilty, and, you know, as in a lot of  
12 these difficult murder cases, you know,  
13 that's difficult. That's a stretch. So  
14 you have to kind of find a way that you  
15 can agree to start moving down that way.

16 Q A question was asked about  
17 bringing in people who would talk about  
18 the good things of Mr. Hall.

19 A Yes, I remember that.

20 Q And I think your response was,  
21 you can do that but you open up other  
22 doors.

23 A Yes.

24 Q All right. Do you know of any

1 witness that you could have called that  
2 would have testified to only good things  
3 about Mr. Hall without allowing the  
4 State to get into prior violent acts?

5 A I don't know of anyone like  
6 that.

7 Q And, let me ask you this. Do  
8 you recall during the penalty -- the  
9 guilt phase of the trial the children  
10 testifying?

11 A Yes.

12 Q And wasn't it part of your  
13 cross-examination, Mr. Ford's cross-  
14 examination, about how Mr. Hall treated  
15 them?

16 A How Mr. Hall --

17 Q Treated them, his children.

18 A I believe that's correct.

19 Q So you tried to get into that  
20 through the children.

21 A I think Mr. Ford did. I think  
22 he had that job.

23 Q Mr. Mayo, let me ask you this.  
24 Can you think of any motions that you

1 could have filed, that you shouldn't  
2 have filed in this case, that would have  
3 made any difference?

4 A Could have filed -- No.

5 Q Can you think of any witnesses  
6 that you would have called that would  
7 have made any difference?

8 A No.

9 Q Let me ask you. Do you recall  
10 how many hours you spent on this case?

11 A I don't recall. A lot, but I  
12 don't recall. A lot. We spent a lot of  
13 time on this case.

14 Q And did you discover the State's  
15 file in this case?

16 A Yes.

17 Q Okay. Was that provided to the  
18 Defendant?

19 A Yes.

20 Q Copies of it. Were you in any  
21 way surprised by anything the State had  
22 at trial?

23 A I don't remember being surprised  
24 at all, no. Now, surprised that you



1 didn't use more, quite honestly.

2 Q Okay. Matter of fact, there  
3 were some statements made by the  
4 Defendant; were there not?

5 A Correct.

6 Q And the State did not use those.

7 A That's correct.

8 Q Other than looking back with  
9 20/20 hindsight, can you tell us  
10 anything you should have done, could  
11 have done that might have made any  
12 difference in this?

13 A No, other than looking back and  
14 this IED possibility, I'd say,  
15 possibility, no, I can't think of  
16 anything that we would have done any  
17 different. No.

18 MR. EARLS: That's all I have.

19 THE COURT: Do you want that  
20 letter returned back to you?

21 MR. EARLS: Your Honor, I'd ask  
22 that be made an exhibit to his  
23 testimony.

24 MR. BUCHANAN: No objection.

1 THE COURT: Be marked Exhibit 6.  
2 (Exhibit 6 was marked  
3 and entered.)

4 REDIRECT EXAMINATION

5 BY MR. BUCHANAN:

6 Q I believe there was some talk  
7 while Mr. Earls was questioning you  
8 about intoxication being a defense. And  
9 intoxication is not a defense as far as  
10 you understand. Is that fair to say?

11 A Yes.

12 Q Intoxication is a mitigator  
13 perhaps --

14 A Right.

15 Q -- but not a defense.

16 A Right.

17 Q We left -- And just to make sure  
18 I didn't get anything unscrambled there,  
19 you ruled out insanity.

20 A Yes.

21 Q Feel comfortable with that.

22 A Yes.

23 Q You can't really remember about  
24 intermittent explosive disorder.

1 A Right.

2 Q Okay. And --

3 A I remember the idea side of it.

4 Q Right.

5 A I remember it being brought up.

6 Q Can't remember what follow up,  
7 if any, was done on it.

8 A Correct.

9 Q All right. And then as far as  
10 if you could have found and talked to  
11 people that could have told you about  
12 the wires with no downside and the  
13 premeditation with no downside, you  
14 would have been glad to have used it, if  
15 you could have determined there was no  
16 downside to it.

17 A If there was no downside, yes.

18 MR. BUCHANAN: No further  
19 questions.

20 RECROSS-EXAMINATION

21 BY MR. EARLS:

22 Q If part of putting in the proof  
23 about these other incidences of him  
24 disconnecting phones was to prevent

1 police from being called, would you have  
2 used that?

3 A No.

4 MR. EARLS: Thank you.

5 THE COURT: Might I excuse Mr.  
6 Mayo to return to work, or does he have  
7 to remain?

8 MR. BUCHANAN: To return to work  
9 subject to something coming up, Judge,  
10 which we'd try to give him some notice  
11 of.

12 THE COURT: Just be available if  
13 they need to contact you through your  
14 office and you're excused. Just remind  
15 you not to discuss the case with  
16 anybody. Thank you, sir.

17 Do you want to call the next  
18 witness?

19 MR. BUCHANAN: Like to take a  
20 break if we could.

21 THE COURT: Let's take one short  
22 break 'til 3:30. Start back at 3:30.

23 (After a recess, the  
24 following proceedings

1                   were had:)

2                   THE COURT: Call your next  
3     witness.

4                   MARTIN ESKEW was called and  
5     being first duly sworn, was examined and  
6     testified as follows:

7     DIRECT EXAMINATION

8     BY MR. ELLIS:

9     Q            Good afternoon, Mr. Eskew. For  
10    the record, would you please state your  
11    name for the Court?

12    A            Martin Eskew.

13    Q            Mr. Eskew, where do you live?

14    A            Jackson here.

15    Q            In Jackson, Tennessee?

16    A            Yes.

17    Q            How long have you lived in  
18    Jackson, Tennessee?

19    A            About seven or eight years.

20    Q            Did you ever live in Lexington?

21    A            No.

22    Q            Okay. Do you know Jon Hall?

23    A            Yes.

24    Q            How do you know Jon?

1 A Through misfortune.  
2 Q Through misfortune?  
3 A Yeah. I was married to the  
4 sister of the girl he killed.  
5 Q You were married to Donna I  
6 believe?  
7 A Yes.  
8 Q So you know -- you knew Billie  
9 for a while then I take it.  
10 A Yes, knew both of them.  
11 Q You knew Billie before she met  
12 Jon?  
13 A Yes.  
14 Q Kind of grew up with Billie?  
15 A Not exactly. She was, I don't  
16 know, 13, 14 before I ever met her.  
17 Q Did you know her tendencies, the  
18 way she acted?  
19 A Not that much. I mean, I knew a  
20 little bit about her, but I didn't like  
21 follow her around or anything.  
22 Q Are you and Mrs. Donna -- are  
23 you married?  
24 A No.

1 Q You divorced?

2 A I'm happily divorced.

3 Q When were you divorced, sir?

4 A '92 or '93. I'm not for sure.

5 I'd have to look.

6 Q Did you ever have a chance to

7 watch Jon and Billie interact?

8 A Oh, yeah.

9 Q Have you had a chance to be

10 around Jon?

11 A Yes.

12 Q How would you characterize Jon,

13 in your own words?

14 A Spoiled brat.

15 Q Complete idiot?

16 A No. Spoiled brat, self-

17 absorbed, only him. Nothing else

18 mattered.

19 Q You never used the word complete

20 idiot to describe Jon?

21 A Well, I don't know. I may have;

22 I may not have. I don't know.

23 Q How about Jon and Billie? How

24 would you characterize their

1 relationship? Did they get along? Did  
2 they fight a lot?

3 A No, they fought a lot.

4 Q And, who would usually instigate  
5 it?

6 A I don't know. I wasn't there to  
7 see it.

8 Q You never saw them fight?

9 A No, I wasn't there. Usually --  
10 I usually saw the aftermath more than  
11 the fights or what instigated them.

12 Q So you never saw her egg Jon on?

13 A No.

14 Q Belittle him?

15 A No.

16 Q Hit him?

17 A No.

18 Q Punch him?

19 A No.

20 Q Do you remember talking to April  
21 Higuera?

22 A Who?

23 Q This lady right here. Maybe by  
24 telephone. Let me ask you this. Do you



1 remember talking to somebody on the  
2 telephone about this case?

3 A Yeah, about his idiot lawyers.  
4 I remember that.

5 Q Was that your words or was that  
6 her words?

7 A That was pretty much my words.

8 Q Why do you characterize them  
9 like that for?

10 A I don't have a high regard for  
11 attorneys.

12 MR. EARLS: Your Honor, I want  
13 to object to that at this point. I  
14 don't see that that's relevant.

15 THE COURT: He's responded he  
16 doesn't have a high regard for  
17 attorneys. We'll let it stand and move  
18 along.

19 Q Do you know if Jon drank?

20 A A lot.

21 Q How often would he drink?

22 A Well, a lot of times when I was  
23 around him he drank. I mean, I didn't  
24 -- I was not around Jon constantly. We

1 didn't visit a lot, but a lot of the  
2 times when I saw him he drank.

3 Q Did he do anything besides  
4 drink? Did he have a substance abuse  
5 problem?

6 A I gather he did. He many times  
7 looked like he was glazed-eyed or  
8 whatever.

9 Q What do you do for a living, Mr.  
10 Eskew?

11 A What do I do for a living?

12 Q Yes, sir.

13 A I work on computers.

14 Q On computers?

15 A Yes.

16 Q I see you have a Jackson Sun --  
17 is that --

18 A Yes, I work for the local  
19 newspaper.

20 Q What do you do for the local  
21 newspaper?

22 A I work on computers.

23 Q Oh, okay. Do you just do that  
24 with them?

1 A Ma'am -- Sir?

2 Q Do you just do that with them?

3 A No, I do some outside consulting  
4 also.

5 Q Were you ever contacted by  
6 defense counsel before this hearing?

7 A No, not to my knowledge.

8 Q Were you ever contacted by  
9 another investigator besides the lady  
10 that called you before this hearing?

11 A No, I don't think so.

12 Q Could Billie be kind of  
13 difficult to deal with sometimes?

14 A Who?

15 Q Billie.

16 A I never had any problem with  
17 her.

18 THE COURT: Does counsel pass  
19 the witness?

20 MR. ELLIS: Yes, Your Honor, I'd  
21 pass the witness.

22 THE COURT: Does the State have  
23 any questions?

24 MR. EARLS: No questions, Your

1 Honor.

2 MR. ELLIS: Hold on, Your Honor.

3 I'm sorry.

4 Q (By Mr. Ellis) What did your ex-  
5 wife or what does your ex-wife do?

6 A For?

7 Q For a living?

8 A Works for an attorney I  
9 understand.

10 Q Do you know which attorney?

11 A No. No, I really don't. I try  
12 to stay far away from Huntingdon, so --  
13 I don't go down there very often.

14 Q Did she draw up your divorce  
15 papers in this case?

16 A I believe so.

17 Q And, to your knowledge, was she  
18 advising Billie how to proceed with any  
19 type of divorce against Jon?

20 A I'm not sure. We were divorced  
21 at this time, and I really wasn't much  
22 in their personal life at this time. I  
23 was living in Jackson, so I didn't have  
24 a lot of access to them. I -- It's

1 possible, but I do not know. I have no  
2 first-hand knowledge of it.

3 MR. ELLIS: Pass the witness.

4 THE COURT: Do you have any  
5 questions?

6 MR. EARLS: No questions.

7 (WITNESS EXCUSED.)

8 THE COURT: Next witness.

9 MR. ELLIS: Your Honor, I'd call  
10 Alice Pearson.

11 THE COURT: Alice Pearson.

12 COURT OFFICER: She doesn't  
13 answer.

14 THE COURT: She doesn't answer.  
15 Do you have another witness?

16 MR. ELLIS: Diane Pearson.

17 THE COURT: She's not out there  
18 either.

19 MR. ELLIS: Your Honor, I would  
20 say to the Court that Alice Pearson and  
21 Diane Pearson were properly served with  
22 subpoenas.

23 THE COURT: We'll take that up  
24 later if you choose to do so as far as

1 having them address that to the Court.  
2 And please remind me if you want some  
3 action taken, and I'll be glad to  
4 entertain the request.

5 JESSE H. FORD III was called and  
6 being first duly sworn, was examined and  
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BUCHANAN:

10 Q Would you state your name,  
11 please, for the record?

12 A Jesse H. Ford III.

13 Q Mr. Ford, how are you employed?

14 A I'm an attorney.

15 Q How long have you been an  
16 attorney?

17 A Since May of 1982.

18 Q And are you licensed here in the  
19 State of Tennessee?

20 A Yes, I am.

21 Q And, back in 1995, '6, '7 when  
22 you represented Jon Hall, you were a  
23 licensed attorney here in the State of  
24 Tennessee?

1 A Yes, sir.

2 Q Were you familiar with the  
3 formulation of the qualifications for  
4 background for first -- for first chair  
5 back then?

6 A Yes, sir.

7 Q Okay. Did you -- I understand  
8 the rule was not mandatory, but did you  
9 roughly meet those minimum requirements  
10 back -- in terms of your experience and  
11 whatnot?

12 A Well, Judge LaFon -- Yeah, I  
13 thought I did.

14 Q Can you just briefly, without  
15 taking too long, tell me what you -- how  
16 many capital trials you had tried?

17 A I had not tried any. I'd been  
18 associated on two but hadn't tried any.

19 Q Okay. When you were associated  
20 on them, did they go to trial?

21 A Yes.

22 Q Okay. So you were like second  
23 chair?

24 A Yes.

1 Q And had you had other felony  
2 experience?

3 A Quite extensive, other trial  
4 work. I -- When I first started and  
5 back in the eighties, we didn't have a  
6 public defender's office. So most  
7 lawyers, young lawyers, were required --  
8 well weren't required, but were asked to  
9 take appointed cases, and I -- about 60  
10 percent of my practice was probably  
11 criminal appointed cases, and so you get  
12 your feet wet real quick.

13 Q They were paying that big 40  
14 bucks an hour and you couldn't resist,  
15 could you?

16 A And 20 out of court.

17 Q Anyway, but that's basically  
18 what led up to your experience for  
19 trying cases, the more you got appointed  
20 to, then you tended to step up and  
21 things of that nature.

22 A Right. And I tried a murder  
23 case. I was co-counsel with Hughie  
24 Ragan back in the late eighties, State



1 versus Michael Chamberlin. And I think  
2 it was Judge Todd's first murder case  
3 when he took the state bench, and, you  
4 know, I was second chair on that one.

5 Q Had you done any particular  
6 seminars that dealt primarily with  
7 capital murder case preparation back  
8 during that time?

9 A I hadn't but Mr. Mayo had.

10 Q Okay.

11 A He'd handled a couple of cases  
12 with co-counsel, and he'd been to a  
13 couple of seminars.

14 Q Okay. Now you weren't the first  
15 lawyer on the case, were you?

16 A No.

17 Q Do you know about -- remember  
18 about when you were appointed?

19 A Sometime in ninety -- I'd say  
20 late '95.

21 Q Late '95 or early '96?

22 A I can't -- ninety -- February of  
23 ninety -- I can't remember.

24 Q At least a year before you

1 actually had to try the case.

2 A Yes.

3 Q Okay. Tell the Court exactly  
4 what you do when you get a case that's  
5 in the middle of -- Were you in private  
6 practice at the time?

7 A Yes.

8 Q Okay. Tell the Court what you  
9 do and what you did in this case in  
10 terms of getting a hold of a file when  
11 you're assigned to it kind of halfway  
12 through the preparation.

13 A We got the file from the  
14 previous attorneys, which I believe were  
15 Carthel Smith and Mike Mosier. Went  
16 through the file, saw what they had  
17 done, saw the motions they had filed.  
18 We divided up the work. Mr. Mayo was  
19 going to do the -- mainly be responsible  
20 for the mitigation, and I was going to  
21 be mainly responsible for the trial work  
22 because Clay -- Mr. Mayo had tried, or  
23 been associated, on one or two capital  
24 cases before, and he knew quite a bit

1 more about the mitigation -- or was more  
2 -- let's say more qualified in that  
3 area, and I felt that I had tried a lot  
4 of cases and I was going to be more --  
5 mainly responsible for the trial, the  
6 guilt or innocence phase of the case.

7 Q Is it fair to say, though, that  
8 y'all welcomed each other's comments and  
9 suggestions on each other's primary part  
10 of preparation of your phase? You  
11 certainly didn't in any way say, "I  
12 don't want to hear from you, Mr. Mayo."  
13 You encouraged him. Anything he had to  
14 say, you at least were willing to hear;  
15 were you not?

16 A Well we were in the same office  
17 together.

18 Q Okay.

19 A I mean, we saw each other on a  
20 daily basis. I mean, at the end of just  
21 about every day, you know, we would have  
22 a, you know, little discussion about  
23 this case, about where we were and, you  
24 know, update, you know, who he'd talked

1 to, who I'd talked to and that kind of  
2 thing.

3 Q My point is, there was no ego  
4 between you and him. If he had  
5 something to say that you thought helped  
6 you, you welcomed to hear -- at least  
7 hearing it, didn't you, and vice versa?

8 A No problem at all in that area.

9 Q Did you -- In preparation for  
10 this, did you yourself talk to the  
11 family, the immediate brothers and  
12 sisters involved in this case?

13 A I think I talked to Mr. -- one  
14 of Mr. Hall's sisters on occasion or  
15 two. I think Mr. Mayo talked to her a  
16 whole lot because that was more of the  
17 mitigation part of the case, penalty  
18 phase, and I think he spent more time on  
19 the phone with her than I did.

20 Q And that's Sheryl Arbogast?

21 A Yes.

22 Q Does that name sound familiar?

23 A Yeah.

24 Q Okay. You don't remember

1 talking to any of the others in  
2 preparation for the case?

3 A I may have. I don't remember.

4 Q Okay. I want to go into  
5 something that I went into with Mr. Mayo  
6 and see what you think about it. We had  
7 a discussion about getting -- Were you  
8 familiar with the brother than had AIDS  
9 down in Texas?

10 A Yes, I -- Yes.

11 Q Okay. Do you remember what  
12 state -- When you got it, he was already  
13 dead, wasn't he?

14 A I think that was the case. I  
15 think that when Mr. Smith and Mr. Mosier  
16 had it, I think that had already  
17 occurred, but I don't remember. I think  
18 that -- I'm pretty sure it had.

19 Q I think I agree with you. I  
20 think he's dead by this time. But my  
21 question is: You didn't have a -- When  
22 you got the file, it didn't have his  
23 testimony preserved in any -- in any for  
24 sure admissible form. Is that correct?

1 A There may have been some notes  
2 about him, but I -- no -- no deposition,  
3 if that's what you're getting at.

4 Q Right. And that's what I mean  
5 when I say admissible form.

6 A I don't think anybody went down  
7 to Texas to take his deposition.

8 Q Well, in a capital case, do you  
9 know of any reason why, if you have  
10 information that someone is dying and  
11 will be dead soon from AIDS or cancer,  
12 one of those degenerative-type diseases,  
13 especially in a capital case, -- do you  
14 know of any reason why you wouldn't  
15 attempt to preserve that testimony?

16 A I'd want to know what he was  
17 going to say first.

18 Q I understand that, but assuming  
19 there was something useful, there's no  
20 reason you can think of offhand not to  
21 at least seek the Court's help in  
22 getting a depo on something like that,  
23 would you?

24 A I think it probably would have

1 been granted if we could show that there  
2 was something very useful, because it's  
3 out of state deposition, and, of course,  
4 the expense --

5 Q Right.

6 A -- of that would -- you know,  
7 the -- both, you know, the State and the  
8 defense attorney would have to be there,  
9 and I think you'd have a pretty heavy  
10 burden to show, first of all, you know,  
11 is he not going to be available. Well,  
12 I don't think that death is something in  
13 a case, in an AIDS case, that you can  
14 predict. You know, I don't think you  
15 could predict that he wasn't going to be  
16 available. So that would have been our  
17 first hurdle because he's there. He's  
18 alive now.

19 Q No, I think you're missing my  
20 hypothetical. Assuming that you can  
21 show he is on the last leg, assuming you  
22 can get a doctor's certificate that  
23 he's, you know, 60, 90, 100 days out,  
24 something of that nature, and he's got

1 some valuable testimony, do you know of  
2 any reason why you wouldn't at least try  
3 and say, "Your Honor, I need some funds  
4 to go get this done"?

5 A Probably would have filed the  
6 motion if we'd known what he was going  
7 to -- what his testimony would have  
8 been.

9 Q And again, I think the record  
10 reflects, it's over by the time you get  
11 in. But I was just asking you as an  
12 attorney if that's what you do when  
13 you've got testimony you want to hold on  
14 to --

15 A You want to preserve it.

16 A -- that you know you've got  
17 somebody fixing to die.

18 A Or you've got somebody that's  
19 not available, that's more than 100  
20 miles from the courthouse, you're going  
21 to try to get an evidentiary on them if  
22 you possibly can, at some point.

23 Q Now, you were -- I want to talk  
24 to you a little bit about the change of



1 venue.

2 A Uh-huh.

3 Q Do you remember there being any  
4 big problem with the change of venue or  
5 any discussions you had with Jon on the  
6 change of venue?

7 A I know that we looked at the  
8 newspaper articles, we preserved -- I  
9 think that they were already in the  
10 file. I know they were. I know that  
11 when we got the file, there were  
12 numerous newspaper articles in there,  
13 and we felt that, you know, based on  
14 informal conversations in Henderson  
15 County, and you have to know what -- you  
16 know, without practicing there and  
17 knowing Henderson County, we felt that a  
18 change of venue had -- was absolutely  
19 necessary, and I discussed that with Mr.  
20 Hall at length.

21 Q And what did Mr. -- did Mr. Hall  
22 agree with you?

23 A Yes. I mean, I'm not in the --  
24 I wouldn't file the motion if my client

1 would -- did not give me permission.

2 I'm not in the habit of doing that.

3 Q Well do you remember having the  
4 hearing?

5 A Judge LaFon granted that on his  
6 own -- on his own -- he said -- he drew  
7 the -- he said draw the order.

8 Q He did it sua sponte?

9 A Yes, from what I -- Yeah, from  
10 what I can recall.

11 Q With Jon's permission?

12 A Well, we weren't opposed. We  
13 filed the motion.

14 Q Okay, you filed a motion.

15 A We filed the motion, and then he  
16 said draw an order.

17 Q Okay. And you had Jon's  
18 permission.

19 A Yes.

20 Q And was there ever a hearing  
21 conducted then?

22 A No.

23 Q So there -- your testimony is  
24 there was nothing to type up, other than

1 the order.

2 A Motion and order.

3 Q I mean, there was no hearing to  
4 type up.

5 A No, not that I remember.

6 Q Do you know why the opening  
7 statements and the final arguments were  
8 never designated to be typed up in this  
9 record?

10 A That's just the common practice  
11 since I've been in practice.

12 Q To get them done or not get them  
13 done?

14 A Not to get them done. It's not  
15 really -- Well, I mean, it's -- I don't  
16 consider it part of the record actually  
17 really, argument.

18 Q You don't think it's a good idea  
19 to get them typed up in a capital murder  
20 case?

21 A Well, maybe, maybe not. It  
22 depends on if there's something in there  
23 that may be inflammatory, but I didn't  
24 think that there -- I can't remember

1 that there was.

2 Q Well you didn't handle the  
3 appeal, though. Right?

4 A Yeah, we handled part -- yes,  
5 part of it.

6 Q Okay. Well you -- I thought Mr.  
7 Donahoe handled the appeal.

8 A No. Well, we had to begin on  
9 it, and then we had to get -- we had to  
10 be relieved.

11 Q You just didn't think it was a  
12 good idea to have that maybe preserved  
13 for someone else to look at down the  
14 road?

15 A I didn't think it was necessary.

16 Q Even in a capital case.

17 A Yes.

18 Q All right. So you're telling me  
19 that you -- Do you ever remember having  
20 a conversation with Jon wherein he told  
21 you he was very, very unhappy about  
22 anybody agreeing to a change of venue in  
23 this case?

24 A After the fact.

1 Q Did you relay that to the Judge,  
2 that he didn't want it moved?

3 A Well it was already granted.

4 Q Well, I know, but did you --

5 A It was already granted, and  
6 again, you got to understand Mr. Hall.  
7 Mr. Hall will say one thing one day and  
8 another thing two weeks, three weeks  
9 later, whatever suits his need -- his  
10 alleged -- whatever his needs are at  
11 that time. He's like a chameleon. He  
12 changes colors about as often as he  
13 changed attorneys.

14 Q So, what you're saying is that,  
15 at one time he agreed to it and one time  
16 he didn't.

17 A At a later day. Yeah, right  
18 before the trial he -- you know, he --  
19 he didn't want to go through with it  
20 there in Madison County, but it was too  
21 -- I mean, it was too late. It was a  
22 done deal.

23 Q Okay. Well, what was your --  
24 Jon was difficult to deal with at times,

1 wasn't he?

2 A I've had a lot of difficult  
3 clients. I've -- I became --

4 Q That's not my question. My --

5 A I became an expert on difficult  
6 clients.

7 Q -- question is: Jon was  
8 difficult, wasn't he?

9 A Every client's difficult.

10 Q Every client you have is  
11 difficult?

12 A At times. If you've ever been  
13 in private practice, you would know that  
14 it's hard to please your client 100  
15 percent of the time. It's very  
16 difficult, 'cause there's a winner and a  
17 loser in every case.

18 Q Yes, sir. Do you think I'm not  
19 in private practice? I just want to --

20 A I don't know.

21 Q Okay.

22 A I don't know what you do.

23 Q Okay. You just said if I was --  
24 "If you were in private practice you

1 would know," and I just wondered if you  
2 thought I was not in private practice.  
3 But anyway -- So, anyway, you're saying  
4 that Jon changed his mind on the change  
5 of venue, and because he was so likely,  
6 like a chameleon, to change his mind  
7 again, that you more or less just said,  
8 "Okay, we had that hearing. It's over.  
9 We're moving on." Would that be a fair  
10 summation of what your position in it  
11 was?

12 A My position was that, "It was  
13 granted. That's what you wanted. We're  
14 here. The Judge is not going to change  
15 his mind." They usually don't after  
16 they rule. That's been my experience.

17 Q Okay. All right. You had the  
18 guilt or innocence phase. What was your  
19 theory of defense?

20 A Voluntary intoxication. Jon had  
21 said he had consumed five, six -- a  
22 number of beers before he went out  
23 there, and that's a defense to  
24 premeditated first degree murder. And

1 he had said -- And we tried to find  
2 people who he had been with, who knew  
3 that he had a drinking problem.

4 Q Your defense to first degree  
5 premeditated murder was that he was  
6 voluntarily intoxicated.

7 A That's what he told us.

8 Q I mean, but once he told you  
9 that, then you said, "That's my  
10 defense"?

11 A Well, that's one of the areas we  
12 were going to explore.

13 Q Okay. Well, I guess what I'm  
14 trying to say is, I didn't notice that  
15 being in the record as being what you  
16 really pushed.

17 A That was one of our theories.

18 Q Okay. What theory --

19 A But, see, he didn't -- when your  
20 client refuses to testify, it's hard to  
21 get that in.

22 Q Okay. So, I guess what -- I'm  
23 back to my original question. When you  
24 got down to the actual trial, what was



1 your theory of defense?

2 A Our theory was to hope that the  
3 jury would show some mercy on Mr. Hall  
4 and that he would have been in -- it's a  
5 domestic situation. He had to be -- We  
6 were trying to get it down to maybe some  
7 form of manslaughter due to the fact  
8 that it's domestic, there are high  
9 emotions here, and, you know, he lost  
10 control, and it was one of those type  
11 situations.

12 Q Okay. In my reading of the  
13 record, it seemed like that getting it  
14 down to voluntary manslaughter seemed to  
15 be where you were headed with Ms. Zager.  
16 Would that be fair to say?

17 A Yeah, which under the  
18 circumstances was difficult, to say the  
19 least.

20 Q If I can refresh your memory,  
21 Dr. Zager testified at about Page 335,  
22 and it -- the summation before Mr. Earls  
23 crossed her was: "It's my impression  
24 based on everything I know about the

1 case that Mr. Hall was acting in an  
2 impulsive manner versus a well thought  
3 out plan." Is that the sum and  
4 substance of where you were headed?

5 A That'd be correct.

6 Q Okay. So you were trying to get  
7 it down from premeditated to --

8 A Some form --

9 Q -- second or voluntary.

10 A Some form of manslaughter.

11 That's what we were shooting for. It's  
12 difficult when you have four fact  
13 witnesses, or five, and one of them's  
14 not going to testify. I've only had one  
15 case where the Defendant did not testify  
16 that I got a good result.

17 Q Okay.

18 A The jury wants to hear from the  
19 Defendant.

20 Q Okay. Did you tell Mr. Hall  
21 that?

22 A Yes. Oh, I explained -- I went  
23 into great detail with Mr. Hall about,  
24 you know, whether he should testify or

1 not, and I told him that it's been my  
2 experience that, you know, the jury is  
3 going to want to hear from the  
4 Defendant, especially in a case like  
5 this. If you're -- You know, it's hard  
6 to prove that he was out of control,  
7 this, that and the other unless he gets  
8 up there and takes the stand. He  
9 refused to take the stand, was not going  
10 to testify. We had hearings on that.  
11 We had a hearing on that, about, "Take  
12 the flag down and I'll testify," and,  
13 you know, that didn't happen.

14 Q Okay. So you're trying to show  
15 that he's explosive, and this was a  
16 passionate thing brought about by  
17 provocation.

18 A I don't know if it was adequate  
19 provocation, but they had had a rocky  
20 relationship, and I think that's evident  
21 in the record.

22 Q Well, okay. If you're going to  
23 show provocation, why wouldn't you put  
24 on some testimony about Billie hitting

1 Jon at least in the past, being abusive  
2 toward him?

3 A That's what Jon said. That's  
4 what Jon said.

5 Q And it's your recollection that  
6 that's the only place you could find  
7 that kind of testimony.

8 A Well, reliable.

9 Q Okay.

10 A Our investigator sought out  
11 every -- we -- Every time I'd see Jon,  
12 he'd have a list of people that he  
13 wanted us to run down, and we ran down  
14 every one of them that was available,  
15 and, I mean, you've got the file. I  
16 don't know if you've got the witness --  
17 the potential witness statements in  
18 there. I don't know if you reviewed  
19 them or not, but after I reviewed them,  
20 I didn't think they were very helpful.

21 Q Mr. Ford, wouldn't you agree  
22 with me that in a capital murder case,  
23 maybe at a minimum you might want to do  
24 is talk to his brothers and sisters? I

1 mean, wouldn't that be a good starting  
2 spot?

3 A Well, one of them hadn't talked  
4 to him for two years. What did they --  
5 I mean, they didn't have much contact  
6 with him, from what I knew.

7 Q Well did you ever talk to them?

8 A A couple of times.

9 Q Who?

10 A I think I talked to Ms.  
11 Arbogast. I'm not sure. I don't  
12 remember.

13 Q Can you name anybody else you  
14 talked to other than Sheryl Arbogast?  
15 He had -- At one time he had six  
16 brothers and sisters. By the time you  
17 got it he had five.

18 A I don't remember. Don't recall.

19 Q Don't remember, don't recall.  
20 Well would you agree with me that in a  
21 normal case, that might be a good place  
22 to start in a capital case, to talk to  
23 the family? They grew up with him and  
24 knew him and brothers and sisters.

1 A That was pretty much covered in  
2 the penalty phase. That was covered as  
3 much as possible. The problem we had  
4 was that Ms. Arbogast wanted to testify  
5 but she hadn't talked to him in two  
6 years, up until the time -- you know,  
7 until this happened, had no con- -- had  
8 very little contact, and we had trouble  
9 -- a lot of problems getting that into  
10 the record. Had to make an offer of  
11 proof on it.

12 Q Well now you made the offer of  
13 proof in the guilt or innocence phase.

14 A In the trial in chief we wanted  
15 to try to get her in.

16 Q Right. You made that offer of  
17 proof there.

18 A Right.

19 Q But in the punishment phase, she  
20 took up 18 lines. You said you went  
21 into it real in depth. Do you consider  
22 18 lines in depth?

23 A They -- She was only allowed to  
24 answer the questions the Judge would

1 allow us to get in.

2 Q In the punishment phase you only  
3 asked 18 lines. I mean, don't you know  
4 there's a lot more to ask her than that?

5 A Like I said in the beginning, we  
6 divided up --

7 Q So this is Mr. Mayo's bailiwick.

8 A Yes. Well, yeah.

9 Q Okay. Well let's go back to  
10 your bailiwick.

11 A Let's go.

12 Q What -- You knew that  
13 premeditation was a real problem for  
14 you. Correct?

15 A We knew he cut the phone line,  
16 and you have several opportunities to  
17 withdraw from what you're doing, and one  
18 of your children is on your back telling  
19 you, "Daddy, please stop," and then  
20 you're dragged out of your house,  
21 dragged down the driveway, and this took  
22 a little time. This didn't happen in  
23 two or three seconds.

24 Q Uh-huh.

1 A Then they bring you over to a  
2 swimming pool, and either they choke you  
3 to death or drown you. Yeah, we had a  
4 big problem with premeditation.

5 Q I notice you mentioned the phone  
6 lines. That was a sinister-looking  
7 thing, wasn't it?

8 A If you're sitting in that jury  
9 box it surely is.

10 Q Looks like you decided to  
11 disconnect those phone -- Actually they  
12 weren't cut, were they?

13 A They were disconnected. They  
14 couldn't make a call from the house.

15 Q I understand. They were  
16 disconnected, which, of course, made it  
17 easier to reconnect them as opposed to  
18 cutting them. Correct?

19 A When somebody's beating you to  
20 death, I think you'd have a hard time  
21 reconnecting the phone line.

22 Q My point is, there was no  
23 evidence that they were cut. They were  
24 disconnected, weren't they?



1 A It doesn't matter.

2 Disconnected, cut, they couldn't make a  
3 call from that house. If he  
4 disconnected the phone line, that goes  
5 to premeditation, goes to planning.

6 Q You don't see any difference  
7 between a disconnected line and a cut  
8 line?

9 A Same result - you can't use the  
10 phone.

11 Q Okay. All right. So, you will  
12 agree with me, that was very sinister  
13 setting there for the jury to know  
14 without explaining it some way. Right?

15 A It's very sinister, and it's  
16 load- -- it's just perfect for the  
17 prosecutor 'cause he -- you know, he can  
18 run you all over the place with that.

19 Q Yeah, he can infer that that was  
20 all part of the grand scheme to kill  
21 you, to disconnect phone lines.  
22 Correct?

23 A Correct.

24 Q Okay. And that was one of your

1 big problems, is he had that free rein  
2 there. Right?

3 A Yeah.

4 Q Okay. Now if you could have  
5 found evidence that Jon had on numerous  
6 occasions in the past disconnected phone  
7 lines to people just to get their  
8 attention, just to talk to them, and  
9 they had never done them any harm, would  
10 that have been some evidence that could  
11 have been used to show that that's not  
12 any evidence of premeditation, he's done  
13 this all his life? Would you have used  
14 it?

15 A I don't agree with that.

16 Q You don't agree with that.

17 A No. I don't think you can say  
18 that that's a habit or custom when --  
19 and convince a jury that he's got a  
20 habit of cutting phone lines to get  
21 people's attention when he has killed  
22 his wife. That just doesn't -- That's  
23 not going to fly. A jury's not going to  
24 buy that.

1 Q Well, you've got it in there  
2 where he's just cut the one phone line  
3 or disconnected the phone line this one  
4 time. You don't see any value  
5 whatsoever in showing that that's the  
6 way that he disconnects the phone, to  
7 get to talk to other people and has so  
8 that they won't be interrupted so that  
9 Jon can command time alone with them and  
10 never hurt them? You don't see that  
11 that would take away any premeditation  
12 at all?

13 A I see it goes the exact  
14 opposite. It goes to his wanting to  
15 control the situation and have, just  
16 like you said, complete control and be  
17 one-on-one with them where there can be  
18 no other interference. It tells me that  
19 he's planned to do something.

20 Q Well, can't you just as easily  
21 argue that the other times he cut the  
22 phone lines or disconnected the phone  
23 lines and he did not, in fact, hurt  
24 anybody, so that, in fact, doesn't mean

1 that he's premeditatedly thinking about  
2 killing anybody?

3 A You could make that argument,  
4 but that's a stretch. That's a -- a  
5 jury -- you got to de- -- you're dealing  
6 with a jury.

7 Q But you agree with me, as you've  
8 got it, you've got it just in there that  
9 it's this one occasion and it's a plot  
10 for this one time. Correct?

11 A It's a -- It doesn't matter if  
12 he -- It's the result. It doesn't  
13 matter what he did in the past. It's  
14 what he did on this occasion. That's  
15 what's relevant.

16 Q Okay.

17 A I don't know how we're going to  
18 get past the relevancy of that. We're  
19 going to say, well that's just his  
20 custom and habit. Is that -- We're  
21 going to have evidentiary problems  
22 getting that in, 'cause he's not going  
23 to testify.

24 Q Okay. Well I know, and if all

1 you've done is talk to Jon, then you  
2 argue --

3 A Well we looked at the -- we  
4 looked at the sheriff -- we looked at  
5 the reports from Huntingdon and all that  
6 domestic -- whatever you want to call  
7 it, domestic problems he had up there,  
8 and I think that had been done on one  
9 occasion up there. That was in -- That  
10 was part of a police record. But I did  
11 not think it would help this case.

12 Q You never talked to his sister  
13 Debbie, did you?

14 A No.

15 Q You never talked to his sister  
16 Kathy, did you?

17 A I'm sure Mr. Mayo did; I didn't.

18 Q I know, but we're talking about  
19 your bailiwick now. We're talking about  
20 guilt or innocence. You never talked to  
21 any of the other sisters, did you?

22 A No.

23 Q Other than Sheryl briefly.

24 A Sheryl; I talked to her.

1 Q Okay. So you don't know what  
2 they could have told you about custom or  
3 habit, do you?

4 A I know what Mr. Hall told me.

5 Q Well I understand what Mr. Hall  
6 told you, but you would agree that your  
7 job as a defense attorney goes beyond a  
8 little bit just living up to just what  
9 he tells you. Correct?

10 A I --

11 Q You do have a duty to  
12 investigate; do you not?

13 A I agree that what -- if they're  
14 going to say he did this or that, then  
15 we're going to have a problem getting it  
16 into evidence.

17 Q Yeah, but you don't know 'til  
18 you talk to them, do you?

19 A I don't know. I don't know.

20 Q You -- So you agree with me, you  
21 don't know until you talk to them.

22 A From what I knew about this  
23 case, I -- and as far as the guilt or  
24 innocence, I don't think they could have

1 helped.

2 Q But you never talked to them, so  
3 we'll just have to hope that you're  
4 right, won't we?

5 A Yeah.

6 Q Okay. And you wanted to -- You  
7 realized -- You said earlier you wanted  
8 to try to get it down to voluntary  
9 manslaughter or murder. Now with  
10 voluntary manslaughter, we've got to  
11 show provocation. Right?

12 A And, that was based on the fact  
13 they were having domestic problems, and  
14 there's always provocation on both sides  
15 when you have a domestic problem.

16 Q But we never heard about any of  
17 that in the trial, did we? We never  
18 heard that there was any kind of  
19 provocation of Billie, of Billie ever  
20 kicking Jon in the groin or Billie ever  
21 hitting Jon. We never heard about that  
22 in the trial, did we?

23 A Well, we needed Mr. Hall to  
24 testify to that.

1 Q But you've agreed you've never  
2 talked to any of the siblings, the  
3 family members that grew up with him  
4 that knew him best. You're saying that  
5 Mr. Hall -- it stopped and ended with  
6 Mr. Hall?

7 A Mr. Hall needed to open the door  
8 to that, yeah.

9 Q And you're saying that you see  
10 no way that you could have used other  
11 people --

12 A I don't --

13 Q -- if you could have found them.

14 A I think it would have been  
15 tough.

16 Q Okay. But we'll never know  
17 again 'cause you didn't talk to them,  
18 did you?

19 A I didn't talk to them about --

20 Q About provocation of Billie.

21 A Well let's get -- let's talk  
22 about provocation. I don't know of any  
23 provocation that justifies, unless  
24 you're in complete self-defense --



1 justifies this particular incident of  
2 conduct.

3 Q Well then why --

4 A And what he did. That's what  
5 we're talking about, what he did. Want  
6 to know how he was provoked into killing  
7 his wife the way he did. You're saying  
8 that some of these family members --  
9 that if he was kicked in the groin, that  
10 justified -- You want to get this before  
11 a jury and say, that justifies his  
12 killing his wife?

13 Q Well, would you agree with me  
14 that the way you left it, you had no  
15 justification whatsoever, never showed  
16 that there was any rancor between the  
17 two people? But again, you didn't talk  
18 to these people, did you?

19 A No, I --

20 Q You never talked to anybody but  
21 Sheryl Arbogast in the family.

22 A I talked to Sheryl Arbogast.

23 Q Other than that, you didn't talk  
24 to anybody, did you?

1 A No.

2 Q All right. Now, let me talk to  
3 you about Sheryl Arbogast. Did you  
4 happen to read a report from Sheryl --  
5 from Gloria Shettles wherein she talked  
6 to Sheryl and they discussed in the DSM-  
7 IV about intermittent explosive  
8 disorder?

9 A I probably read that.

10 Q What'd you do about it?

11 A What do you mean?

12 Q Did you follow up on it in any  
13 way trying to see if he really had that  
14 disorder or not?

15 A I think that Dr. Zager was  
16 involved in that, and if that had been  
17 the case, Dr. Zager would have  
18 recommended that we did.

19 Q Yeah, but Dr. Zager's not a  
20 psychiatrist, is she?

21 A No, but she's a psychologist,  
22 and she can evaluate him and recommend  
23 that he needs further evaluation, and  
24 she did not make such a recommendation.

1 Q Yeah, but you didn't give her  
2 much of a history to work with either,  
3 did you?

4 A She took a history from Mr.  
5 Hall.

6 Q She took a history from Mr.  
7 Hall. Are you telling me that you think  
8 that's all a defense attorney has to do,  
9 is to put the man over -- the Defendant  
10 over by the doctor and let him take a  
11 history? You're not really telling me  
12 that you think that's --

13 A I can't --

14 Q -- that's the minimum standard,  
15 do you?

16 A I can't give his history. He  
17 has to give his history. The patient  
18 has to give the history to the doctor.

19 Q Mr. Ford, you don't really  
20 believe that, do you?

21 A Yeah, I believe it.

22 Q You don't believe that it's not  
23 -- You don't believe --

24 A Every time I --

1 Q -- that you have an obligation  
2 to go out and make that social history  
3 and put it together and not just rely on  
4 what the Defendant says?

5 A Make up --

6 Q You don't really think that you  
7 have an obligation to do that?

8 A Make up a social history? Is  
9 that what you're saying?

10 Q Yes, sir.

11 A Make it up?

12 Q To go investigate it.

13 A It was investigated. It was  
14 investigated by Gloria Shettles, by Dr.  
15 Zager, thoroughly investigated.

16 Q Gloria Shettles says that we  
17 ought to go forward on IED. You didn't  
18 think you ought to maybe go to the Judge  
19 and say, "Judge, I need a psychiatrist  
20 on this"?

21 A He'd been examined by the state  
22 psychiatrist.

23 Q And you thought that was enough.

24 A And, Mr. Hall did not want to be

1 examin- -- he didn't want to throw up an  
2 insanity-type defense. He resisted that  
3 from the very beginning.

4 Q Have you ever read the capital  
5 case guidelines of the American Bar  
6 Association for what a lawyer ought to  
7 do on one of these cases?

8 A Yes, I have.

9 Q And you're telling me that you  
10 think that all you have to do for a  
11 social history is put the man in front  
12 of a state psychologist?

13 A He was in front of the  
14 psychologist that -- the expert that was  
15 approved for the defense.

16 Q And you think it stops there, I  
17 mean, that you don't do anymore than  
18 that.

19 A That's where you start.

20 Q Now I think we agree. That's  
21 where you start. But then you will  
22 agree with me, would you not, that it's  
23 your job to make sure that a complete  
24 social history is prepared so that the

1 Defendant may have told her some truth,  
2 some not so truths, some delusions, some  
3 not delusions? You have to back that up  
4 and go out and get an investigation  
5 done; do you not?

6 A I can't -- I have to rely on  
7 what the doctor says. I have to rely on  
8 that. If she -- She's the professional  
9 in that area. I have to rely on what  
10 she says.

11 Q Okay.

12 A And I also have to rely on the  
13 fact that Mr. Hall didn't want to go  
14 down that road.

15 Q Mr. Hall didn't want to go down  
16 the insanity road.

17 A He didn't want to -- He  
18 certainly didn't.

19 Q Okay.

20 A He -- And, there was nothing --

21 Q Do you understand the difference  
22 between IED and insanity?

23 A I sure do, and --

24 Q Explain it to me.

1 A You're talking about impulsive  
2 behavior. Is that what you're talking  
3 about? Uncontrolled, impulsive  
4 behavior. Insanity, you're talking  
5 about a psychiatric disorder that  
6 requires treatment.

7 Q You don't think intermittent  
8 explosive disorder is a psychiatric  
9 disorder?

10 A I'm not a doctor.

11 Q Now, --

12 A Don't know.

13 MR. BUCHANAN: May I get this  
14 marked, Your Honor? And, Judge, I  
15 apologize. Got some notes on this.  
16 I'll get you a cleaner copy later. I'd  
17 like to put it in and come bring a  
18 cleaner copy later. We've got some  
19 marks on it.

20 THE COURT: Has the State seen  
21 it?

22 MR. EARLS: No, sir.

23 MR. BUCHANAN: It's the -- It's  
24 Gloria Shettles. It's one of her memos.

1 THE COURT: That will be marked  
2 Exhibit 7 I believe. This is the memo  
3 from Gloria Shettles.

4 (Exhibit 7 was marked  
5 and entered.)

6 THE COURT: Do you need the  
7 witness to have it first?

8 MR. BUCHANAN: Yes, sir, I'd  
9 like to approach him with it.

10 Q Mr. Ford, does that appear to be  
11 one of Gloria Shettles' reports that she  
12 prepared for your file?

13 A If you'll give me a minute I'll  
14 tell you.

15 Q Okay.

16 A I remember reading that.

17 Q You remember reading it.

18 A Yeah.

19 Q And this is the report that was  
20 prepared for your file by Gloria  
21 Shettles.

22 A Right.

23 Q All right.

24 A In mitigation.



1 Q All right.

2 MR. BUCHANAN: May I carry it  
3 back and question him from it, Your  
4 Honor?

5 Q Okay. On Page 8 of that, she  
6 couldn't be more clear that -- from  
7 everything she's been able to uncover,  
8 that he may suffer from IED. Right?

9 A That's what -- That's what she  
10 says he may, yeah.

11 Q Tell me one thing, one thing,  
12 you did after reading this to try to  
13 prove to a jury that he had IED.

14 A Can't think of any.

15 Q Thank you, Mr. Ford. Okay.  
16 I've talked at some length with Mr. Mayo  
17 about there being no pictures introduced  
18 of Jon, even pictures in the punishment  
19 phase. Are you here to tell me that  
20 pretty much was his bailiwick, the  
21 punishment phase?

22 A Yes.

23 Q Okay.

24 A Well we -- I mean, we worked on

1 it together, but, I mean, he had more  
2 experience in that area.

3 Q Well do you know of any reason  
4 why you wouldn't try to put a few  
5 pictures to show him to be a human  
6 being?

7 A I questioned his children at  
8 length about whether or not he was a  
9 good father, good provider, as best I  
10 could. It's very difficult to cross-  
11 examine children. But we tried to  
12 present that to the jury in the  
13 guilt/innocence phase.

14 Q You didn't ask one of the  
15 sisters about his abilities as a father,  
16 did you? You went into great depths  
17 that he grew up in a household with tons  
18 of fights in it. You never talked one  
19 thing about him being on a white horse  
20 or being a good guy or being a human  
21 being, did you?

22 A What do you mean?

23 Q You never asked them anything  
24 about was Jon a good and kind person

1 ever, did Jon ever do anything good for  
2 anybody.

3 A Oh, I think I did. I don't -- I  
4 think I asked if he was a good father.  
5 I know I did.

6 Q Do you realize there was  
7 testimony available to you that he had a  
8 child with cerebral palsy, that he sat  
9 there and did the exercises with that  
10 child that were excruciatingly hard to  
11 do and focused, and that he sat there  
12 with that baby and did those things?  
13 For what reason would you not let a jury  
14 know something like that, Mr. Ford?

15 A In which phase?

16 Q In the punishment phase. I know  
17 it's not your bailiwick, but what  
18 possible way would that hurt, to make  
19 him look like something less than a  
20 monster?

21 A Well, I think we tried to do  
22 that.

23 Q Well, you examined extensively  
24 on the fact he grew up in a monstrous

1 household.

2 A And that go- -- and that can go  
3 to show that that's why he has the -- he  
4 had the problems he had at the time that  
5 this occurred.

6 Q But it didn't occur to you that  
7 maybe showing some nice family pictures,  
8 showing him being a good father, might  
9 be a little bit better than just  
10 reminding the jury that there's nothing  
11 about Jon that's not violence-connected?

12 A That might have been a good  
13 thing to do, but looking back on it, I  
14 don't know where we -- you know, it may  
15 have been a problem to gather that  
16 information.

17 Q Well if I'd had un-rebutted  
18 testimony from three sisters that they  
19 would have provided you a videotape,  
20 that they would have provided you  
21 pictures, all you would have had to done  
22 was talked to them and asked, --

23 A If they had --

24 Q -- do you have anything to rebut

1    them saying that?

2    A            If they had offered it at that  
3    time, it would have been accepted.

4    Q            Well --

5    A            It's easy to go back -- you  
6    know, go back and five years later and  
7    say, yeah, you should have done this,  
8    you should have done that.

9    Q            Mr. Ford, if they offered.  
10   They're not his lawyer. Did it ever  
11   occur to you as his attorney that maybe  
12   you might ought to call them and say,  
13   "Hey, have you got a picture of this guy  
14   doing anything other than beating the  
15   holy wampum out of his wife? You got a  
16   picture of him being a good daddy  
17   holding his little daughter?" I mean,  
18   did it ever occur to you to ask a  
19   question like that?

20   A            No. I was having a hard enough  
21   time dealing with the autopsy pictures.

22   Q            You were having a hard time  
23   dealing with the autopsy pictures?

24   A            Yes. They were passed to the

1 jury, yeah. Hurt your case.

2 Q Well, you would agree with me  
3 that it's your job -- is to see that  
4 ahead -- to see the autopsy pictures  
5 ahead of time and try to formulate a way  
6 that maybe you can put some pictures in  
7 to counteract them. That's kind of  
8 basically what we're hired to do, isn't  
9 it?

10 A Counteract the autopsy pictures?

11 Q To try to take some of the sting  
12 away from them, to do something.

13 A I don't know how you take the  
14 sting away from an autopsy picture.

15 Q Okay. You don't think that  
16 showing him being a decent human being  
17 and being a good father would in some  
18 small way --

19 A We tried to show that.

20 Q But you never put a picture one  
21 in, and you never talked to the sisters  
22 about pictures, did you?

23 A You've asked me that three or  
24 four times, and I think the same -- I've

1 given the same answer.

2 MR. BUCHANAN: Your Honor,  
3 again, I want to put in this mitigation  
4 assessment, and we've got some notes on  
5 it, but I'll get you a clean copy, but I  
6 wanted to go ahead and prove it up  
7 through him, if the Court doesn't mind  
8 while I've got him here.

9 MR. EARLS: I haven't seen it,  
10 Your Honor.

11 Your Honor, I'm going to object  
12 to that document. I don't know what it  
13 is, who prepared it or -- well, for that  
14 matter, how it's even relevant at this  
15 point.

16 MR. BUCHANAN: Well, I'm going  
17 to prove it up through him that it was a  
18 mitigation assessment prepared for his  
19 file.

20 THE COURT: By?

21 MR. BUCHANAN: By Ann Charvat.

22 THE COURT: General, let's let  
23 him ask questions. It'll be marked for  
24 identification now, and then we'll argue

1 the battle, if there is one, whether  
2 it's accepted or not. Let's go ahead.  
3 It's going to be marked Exhibit 8, and  
4 then, General, I'll hear further on your  
5 objection if you wish to make it.

6 (Exhibit 8 for identification  
7 was marked.)

8 THE COURT: Pass it to the  
9 witness, and you may ask, Mr. Buchanan.

10 MR. BUCHANAN: Yes, Your Honor.  
11 At this time I'd ask the witness to take  
12 a little time to review that and see if  
13 he remembers it being prepared for his  
14 file and ...

15 A Yes, I can identify this.

16 THE COURT: Witness is ready.  
17 He's reviewed the document and responded  
18 then that he can identify it.

19 MR. BUCHANAN: He -- I'm sorry.  
20 What did you say, Your Honor, that last?

21 THE COURT: He's responded that  
22 he can identify the document that you  
23 passed him.

24 Q And was it prepared for your



1 file for mitigation assessment?

2 A Yes.

3 Q All right. And I take it that  
4 you read and familiarized yourself with  
5 that sometime during the course of the  
6 trial.

7 A Yes.

8 Q Okay.

9 MR. BUCHANAN: Your Honor, then  
10 I would tender it. I think it's  
11 relevant.

12 THE COURT: General, any further  
13 argument on it?

14 MR. EARLS: No.

15 THE COURT: I'll let it be  
16 accepted, and it will remain now Exhibit  
17 8.

18 (Exhibit 8 was marked  
19 and entered.)

20 Q Did you ever talk to the  
21 Stanfills or the Foremans or the  
22 Brittains, the neighbors?

23 A Our investigator did.

24 Q Your investigator did.

1 A Got statements. Ms. Eskew took  
2 statements from them.

3 Q Okay. And you --

4 A And I reviewed those statements.

5 Q And just couldn't find anything  
6 in there that was worth putting them on  
7 to show he was a decent, kind father,  
8 human being?

9 A We were looking for other type  
10 evidence at that time. I think that was  
11 more of the provocation-type statements.

12 Q Mr. Ford, would you not agree  
13 that when it comes to witnesses in a  
14 capital murder case, you look at them  
15 for everything? Do you not?

16 A Yeah, you look at them for  
17 everything, and you go with the ones you  
18 think need to be there, the ones that  
19 can help your case.

20 Q Okay. If -- You haven't been in  
21 here, but you're going to have to assume  
22 for a moment that I've produced some  
23 neighbors that have come up and said  
24 some pretty nice things about Jon.

1 A And I'd have to --

2 Q Assume that for me.

3 A I'd have to also assume that  
4 they were telling the truth, wouldn't I?

5 Q In a hypothetical.

6 THE COURT: Instruct the witness  
7 then not to ask questions.

8 Go ahead.

9 Q If you could produce that  
10 testimony, can you tell me where there  
11 is a downside in trying to humanize Jon  
12 at the punishment phase?

13 A There's not a --

14 Q Showing --

15 A There's not a downside in trying  
16 -- We tried to do that.

17 Q Okay.

18 A But --

19 Q But you never talked to these  
20 people yourself, did you?

21 A No, but I read their statements,  
22 and I didn't -- did not -- I mean, some  
23 -- I don't remember exactly which were  
24 used, which were not used. I don't

1 remember.

2 Q Your investigator talked to Mr.  
3 Brittain, to the Brittains. If  
4 contained in your very file dated  
5 October 6th, 1996 you have a memorandum  
6 from Gloria Shettles saying that she  
7 couldn't find them, are you still  
8 telling me that you looked at your  
9 report from your investigator?

10 A I could have been mistaken.  
11 There were so many names that he gave.  
12 He gave us about 20 to 30 names of  
13 different people. I, you know ...

14 Q Would it surprise you to know  
15 that we found the Brittains and we  
16 brought them up here to testify and  
17 they've said some things that I think  
18 you could fairly characterize to say  
19 were helpful? Don't you think in a  
20 capital case you've got to do a little  
21 more than, "I can't find their phone  
22 number"?

23 A Did it say that she couldn't  
24 find their phone number? I think it

1 said couldn't find them.

2 Q Couldn't find the address,  
3 couldn't find the phone number. Don't  
4 you think -- Don't you think you need to  
5 push a little further than that? I'll  
6 withdraw the question.

7 Anyway, you don't remember  
8 talking to the Stanfills or the Foremans  
9 or the Brittains, do you?

10 A No. But I'll tell you this, if  
11 they'd been available and they had  
12 something good to say about Mr. Hall, we  
13 would have used them at the trial.

14 MR. BUCHANAN: Your Honor, I'm  
15 through with this witness.

16 THE COURT: General, you may  
17 ask.

18 CROSS-EXAMINATION

19 BY MR. EARLS:

20 Q You were asked about the  
21 Brittains. Of course, the evidence is  
22 that your investigator couldn't find  
23 them. You reviewed the State's file in  
24 this matter, didn't you?

1 A Yes.

2 Q And the statements. Is that  
3 correct?

4 A Yes.

5 Q If part of the statement of the  
6 witnesses just spoken of, the Brittains,  
7 was that before the murder, Jon Hall  
8 said to the Brittains that he was going  
9 to grind her up as hamburger meat, would  
10 you have wanted that witness?

11 A No, and that refreshes my memory  
12 about that. I think he had said to  
13 several different people that he would  
14 -- you know, intended to do harm to his  
15 wife.

16 Q Okay. And you, of course,  
17 reviewed those statements.

18 A Yes.

19 Q Now let me ask you this. As  
20 defense counsel, when you call someone  
21 in to talk about how good a person is,  
22 don't you open up certain doors?

23 A Yes, sir.

24 Q And, did you have information

1 about Mr. Hall abusing his wife?

2 A Yes, sir.

3 Q And, by calling those witnesses  
4 and asking them those questions --

5 A In fact, I think there were some  
6 records, domestic records, that were  
7 available that could have been used that  
8 would not have been favorable to Mr.  
9 Hall. Police reports, et cetera.

10 Q Okay. So based upon you -- Wait  
11 a minute. You had an investigator in  
12 this case, didn't you?

13 A Yes.

14 Q Two of them?

15 A Ms. Eskew and Ms. Shettles, yes.

16 Q Let me ask you. Did that  
17 investigator, to your knowledge, contact  
18 every person that Mr. Hall wanted  
19 contacted?

20 A That she could find, every  
21 single one of them.

22 Q And did you review her notes and  
23 any statements that were made?

24 A Yes, sir.

1 Q And based upon years experience  
2 as a trial attorney, did you weigh the  
3 good and the bad and the pro's and the  
4 con's about calling a particular  
5 witness?

6 A I sure did.

7 Q And, based upon the fact that  
8 the State might have gotten into prior  
9 violent behavior and things of that  
10 nature, that's what you made your  
11 decision whether or not to call a  
12 witness?

13 A That's correct. And this  
14 testimony would not have been that  
15 helpful, and you're taking an extreme  
16 risk when you open that door about  
17 character.

18 Q Okay. Let me ask you this. On  
19 the date of the murder, the time of the  
20 murder, do you know of any witness who  
21 offered any evidence of provocation?

22 A At the time of the murder?

23 Q I'm talking about at the murder.  
24 Do you know of any witness that said Jon



1 was provoked?

2 A No.

3 Q Now, --

4 A Not on that occasion.

5 Q Now, --

6 A In fact, there were only a  
7 handful of witnesses, fact witnesses, to  
8 this whole event.

9 Q And all of them testified except  
10 Mr. Hall.

11 A Yes.

12 Q Now, touching on that, you did  
13 discuss with him his option about  
14 testifying?

15 A At great length.

16 Q And based upon your discussion  
17 with him, -- There was even a hearing on  
18 it in front of Judge LaFon, wasn't  
19 there?

20 A That's correct.

21 Q He made the decision not to  
22 testify.

23 A Yes, sir, he did, and --

24 Q If I recall, the basis of his

1 decision was the fringe on the flag or  
2 the eagle. Was that part of it?

3 A Something to do with  
4 international law.

5 Q Maritime law or --

6 A Maritime law.

7 Q But he was clearly advised of  
8 that right and all the consequences and  
9 just made a choice.

10 A Yes. Yes, he was, and he made a  
11 choice, and he was fully informed of his  
12 rights. In fact, he went to the books  
13 himself, and I'm sure, if you look at  
14 his pro se motions, yes, he was fully  
15 informed.

16 Q Now let me talk about the  
17 defense. You decided to use  
18 intoxication to try to get the jury to  
19 convict of a lesser charge.

20 A Yes, the lesser charge. We were  
21 hoping for some form of manslaughter at  
22 best, and provocation being from the  
23 domestic side of the house.

24 Q Okay. Now, did you discuss this

1 with Jon Hall?

2 A Yes.

3 Q And, you've looked at documents  
4 here where people have talked about this  
5 intermittent explosive disorder.

6 A Right.

7 Q You said you saw that document.

8 A Yes.

9 Q Did you discuss all that with  
10 Mr. Hall?

11 A Yes.

12 Q And, did he want to pursue any  
13 kind of defense like that?

14 A No. He --

15 Q Clearly that was explained to  
16 him.

17 A Mr. Hall, in his mind, had not  
18 done anything wrong. Mr. Hall, in his  
19 mind, was guilty of some form of  
20 criminally negligent homicide. That's  
21 the way he perceived this.

22 Q But the option was presented to  
23 him about pursuing some kind of mental  
24 defect.

1 A Absolutely.

2 Q And he rejected it.

3 A He sure did.

4 Q And based upon your discussion  
5 with your experts and the State's  
6 experts, you made -- together with him,  
7 made a decision to pursue intoxication.

8 A Other lines of defense, yes,  
9 sir.

10 Q Other lines of defense. Now let  
11 me correct something. You will agree  
12 with me, of course, that intoxication by  
13 statute is not a defense, but it does  
14 remove the premeditation.

15 A Correct.

16 Q Okay.

17 A That's what I meant to say,  
18 premedita- -- removes specific intent.

19 Q Right. Okay. Now, these  
20 sisters that have been talked about,  
21 were they interviewed by your  
22 investigators or other witness- -- or  
23 other people working on the case?

24 A To my knowledge, and I think Mr.

1 Mayo talked to them.

2 Q Well, they obviously testified  
3 at the sentencing phase, didn't they?

4 A Yes. And from what I  
5 understood, they didn't have a very good  
6 relationship with Mr. Hall, that they  
7 weren't really a part of his life until  
8 after he did what he did, and then they  
9 became, you know, more a part of his  
10 life at that point, from what I  
11 understood.

12 Q Now, all the evidence that was  
13 obtained, to your knowledge, was that  
14 provided to Dr. Zager?

15 A Yes. All the reports,  
16 everything; all the discovery,  
17 everything.

18 Q Family history and all that?

19 A Yes.

20 Q And you discussed everything  
21 with her?

22 A Yes. Mr. Mayo mainly met with  
23 her, but I met with her, too. We had --  
24 We all met together. Dr. Zager did a

1 very thorough job, as far as I'm

2 concerned, and she's very qualified.

3 Q She has been an expert in how

4 many --

5 A That's what she does.

6 Q That's how she makes a living.

7 A That's how she makes -- That's

8 the way I understand it. She's done it

9 for years.

10 Q And she did not emphasize to you

11 in any way that you needed to pursue

12 this intermittent explosive disorder.

13 A No.

14 Q Now, had you known about these

15 -- this evidence about Jon's tendency to

16 disconnect phones?

17 A We had come across some police

18 reports I think from Carroll County that

19 that had happened on occa- -- maybe one

20 -- maybe once or twice. I don't know

21 how many times.

22 Q And particularly, if the

23 evidence shows that he had disconnected

24 phones to keep people from contacting

1 police, would you have used that?

2 A No, sir, and I tried to explain  
3 that, that it goes to planning, it goes  
4 to premeditation, it goes to control,  
5 and that was the -- one of the  
6 prosecution's theory, was that he wanted  
7 to control his wife, and that was one of  
8 the ways that he exercised control over  
9 her.

10 Q Okay. Now, in the penalty phase  
11 of the trial, you called -- did you call  
12 a former employer of Mr. Hall?

13 A Randy Helms, certainly did.

14 Q And what was the purpose of  
15 that?

16 A To try to humanize Mr. Hall.

17 Q Okay. And of all the witnesses  
18 you came across, he was the best one to  
19 do that with.

20 A He was the most credible. Mr.  
21 Helms' reputation in Lexington is  
22 unimpeachable. He gave Mr. Hall a job  
23 when he really didn't need anybody  
24 because he felt sorry for Mr. Hall's

1 family. He's opposed to the death  
2 penalty. He is an upstanding, upright,  
3 good Christian man, and, yes, he  
4 humanized Mr. Hall, and did it  
5 sincerely.

6 Q Now, during the guilt or  
7 innocence phase, you and Mr. Mayo, of  
8 course, cross-examined the daughters of  
9 Billie Jean Hall and Jon Hall in this  
10 matter; did you not?

11 A Yes.

12 Q And part of the cross-  
13 examination, of course, was how he cared  
14 for them.

15 A Yes, sir. And I explained in  
16 depth just about every time I met with  
17 Mr. Hall the dangers of child testimony.  
18 Children inevitably tell the truth.  
19 They don't have a reason to make --  
20 especially at this age, this young age,  
21 they don't have any reason to make  
22 anything up. They're thinking on a  
23 concrete level. And I told Mr. Hall  
24 that if those children had to get up on



1 that witness stand and testify to what  
2 they observed, that the jury was going  
3 to have a tough time dealing with that,  
4 and we were going to have a tough time  
5 cross-examining them, not to further  
6 inflame the jury. I mean, those are  
7 very -- that testimony was very damaging  
8 to Mr. Hall, and I told him beforehand  
9 that we were going to have some problems  
10 because the jury would say, "You know,  
11 what, Mr. Hall? You have put your  
12 children through this. You put them  
13 through it."

14 Q All right. So, you tried to  
15 humanize him, as the term is, in the  
16 penalty phase, tried to humanize him in  
17 the guilt phase.

18 A Absolutely, especially with the  
19 -- I asked these -- you know, was he a  
20 good father, but you don't want to go  
21 too far with children who have just gone  
22 through very traumatic testimony, having  
23 to come into court and relive this  
24 thing. You've got to be careful with

1 children, child witnesses, very careful.

2 Q As a matter of fact, one of the  
3 witnesses testified that she jumped on  
4 Jon Hall's back trying to get him off  
5 her mother.

6 A And begged -- That's correct,  
7 and begged him to stop beating her. And  
8 I'll never forget Mr. Woodall's harping  
9 on that during the closing of the penal-  
10 -- of the guilt/innocence phase. And  
11 when you have that and you can go to the  
12 jury and you can say, "His child was  
13 begging her father to stop," it's very  
14 damaging.

15 Q Also, your opinion as trial  
16 counsel, defense counsel, when the  
17 Defendant's own daughter gives such  
18 testimony about how he would treat or  
19 allow his daughter to observe and go  
20 through that, how can you make him look  
21 like a good father?

22 A It's very difficult. It's very  
23 difficult. You have to -- These  
24 children didn't -- I mean, they were

1 torn. They were torn. They didn't want  
2 to be there, but, Lord knows, he put  
3 them there.

4 Q Let me ask you this. Were you  
5 aware also that the children had been  
6 abused?

7 A We had -- That had come up as  
8 part of the case. Well there were some  
9 allegations of abuse, you know. I don't  
10 -- We tried to stay away from that.

11 Q And in --

12 A Mr. Hall wasn't on trial for  
13 that.

14 Q I understand, but in bringing in  
15 witnesses and start asking about  
16 character and opening doors, that's  
17 certainly one of the doors that could be  
18 opened.

19 A It could have been opened.

20 Q And you wanted to avoid that.

21 A We wanted to avoid -- Yes, sir,  
22 to say the least. We had enough doors  
23 that were already open we had to deal  
24 with.

1 Q You had the State's discovery,  
2 State's evidence. Were you surprised by  
3 any witness's testimony?

4 A Any of the State witnesses?

5 Q Yes.

6 A No, sir.

7 Q Knew what all the evidence was  
8 going to be.

9 A Yes, sir.

10 Q Explained it all to Mr. Hall.

11 A Explained it to him? I talked  
12 to Mr. Hall -- When I would talk to Mr.  
13 Hall, I would try to reason with him  
14 about where this thing was going, and it  
15 was his choice. It was his choice. He  
16 was going to trial. And, you know, the  
17 family of the victim wanted leniency, so  
18 to speak for Mr. Hall, because as part  
19 of the discussions early on, or -- when  
20 we got closer to the trial, the offer  
21 was life with parole, that they didn't  
22 want to have a hand in seeing that, you  
23 know, Mr. Hall received capital  
24 punishment because of these children.

1 So the family even showed him leniency.

2 Q But Mr. Hall insisted on going  
3 to trial.

4 A Mr. Hall was put under oath and  
5 was asked whether or not this offer was  
6 conveyed to him, and he acknowledged  
7 that it was, and he rejected that offer.

8 MR. EARLS: Your Honor, could I  
9 see the State's -- Exhibit 1?

10 THE COURT: Exhibit 1 being the  
11 transcript.

12 MR. EARLS: If I could have just  
13 a second, Your Honor.

14 Q Of course, the record will speak  
15 for itself, but if Volume I of the  
16 transcript shows that Mr. Hall was  
17 placed under oath by Judge LaFon and  
18 questioned about whether or not he  
19 received an offer and rejected it,  
20 that's your testimony.

21 A That's my testimony.

22 Q Mr. Ford, can you think of  
23 anything that you could have done,  
24 should have done that any way would have

1 made a difference in the outcome of this  
2 case?

3 A No, sir. And if he were tried  
4 again tomorrow, I don't think there  
5 would be a different outcome.

6 MR. EARLS: That's all I have.

7 MR. BUCHANAN: May it please the  
8 Court:

9 REDIRECT EXAMINATION

10 BY MR. BUCHANAN:

11 Q Mr. Ford, am I to -- I need to  
12 clear up a few things. In talking about  
13 speaking with the sisters, that would be  
14 Debbie Davis, Kathy Hugo, Sheryl  
15 Arbogast and Carol Alexander. I notice  
16 that when he was questioning you you  
17 said, "What I understood is that they  
18 had been alienated for some time." Is  
19 that correct?

20 A Yes.

21 Q Because you never talked -- I  
22 want the record very clear on this. You  
23 never talked to anybody but Sheryl, and  
24 her in a very limited manner. Correct?

1 A Yes, but I think Mr. Mayo talked  
2 to them at length. I'm sure he did.

3 Q Talked to who?

4 A Sheryl Arbogast, at length,  
5 numerous occasions.

6 Q All right.

7 A And she hadn't seen him for two  
8 -- hadn't been in contact with Mr. Hall  
9 for two years. That was my  
10 understanding.

11 Q Okay. Well, whatever she could  
12 have testified to, we'll just let that  
13 roll. Okay? Do you understand a  
14 difference between a character witness  
15 and a mitigation witness?

16 A Yes.

17 Q Do you understand the difference  
18 between a capital punishment phase and a  
19 regular punishment phase --

20 A Yes.

21 Q -- of a trial? Well what's the  
22 difference, in general?

23 A Well, in mitigation, you've got  
24 a lot of leeway.

1 Q Whole lot more than you do --

2 A Whole lot more than you do at a  
3 general sentencing, but at a sentencing  
4 hearing, most judges, in their  
5 discretion, allow a lot of leeway  
6 because you got lay witnesses coming in,  
7 and, you know, the judge doesn't want to  
8 appear -- you know, they want -- What  
9 harm is it to let it in at the  
10 sentencing hearing? There's no harm.

11 Q Would you agree with the  
12 statement that the U. S. Supreme Court  
13 and the Supreme Court of Tennessee has  
14 said, if there's something good to say  
15 about the boy come punishment phase, it  
16 comes in in mitigation?

17 A I agree, yes.

18 Q And it doesn't trigger all this  
19 character, have-you-heard stuff, when  
20 you have someone testifying as to  
21 general reputation, does it?

22 A Not in the mitigation phase, but  
23 what -- your question was directed at  
24 the guilt/innocence phase. You asked



1 me, "Did you not want to show the jury  
2 that he was a good guy?"

3 Q No, I -- I --

4 A In the guilt/innocence phase.

5 Q Well let me make it --

6 A And that does open doors.

7 Q -- make it clear to you. I  
8 meant the punishment phase. I don't  
9 know if you and I got off on the wrong  
10 track there.

11 A That's the way I perceived it.

12 Q Okay. But Dr. -- you put Dr.  
13 Joe Mount on, and he testified that Jon  
14 was extremely concerned about his  
15 children, and in particular, the child  
16 with CP, and nothing bad happened as a  
17 result of that, did it?

18 A No.

19 Q Okay. And, --

20 A But he didn't get into the fact  
21 that he had a habit of cutting phone  
22 wires.

23 Q I'm not talking about cutting  
24 phone wires. I --

1 A You're talking -- Yeah, that's  
2 what you -- excuse me, but I remember  
3 that you insisted that we should show  
4 that as a pattern of behavior.

5 Q Sir, I haven't mentioned phone  
6 wires since I've stood back up, I  
7 believe the record will show. So can we  
8 just confine ourselves to my questions?

9 THE COURT: Just answer the  
10 questions.

11 Go ahead.

12 THE WITNESS: Yes, sir. Sorry,  
13 Your Honor.

14 Q So, do you know of any reason  
15 why you wouldn't put on more things  
16 showing that Jon's a good father at the  
17 punishment phase without, as Mr. Earls  
18 said, the character witnesses coming in  
19 and the wall come crashing down on a guy  
20 and having all sorts of trepidations  
21 about doing it?

22 A We put on who we thought was  
23 appropriate at the time.

24 Q Without you or Mr. Mayo talking

1 to all the sisters and brothers.

2 A Mr. Mayo had.

3 Q Mr. Mayo had only talked to Ms.

4 Arbogast. Isn't that correct?

5 A He may have -- I don't remember.

6 I mean, it's five years ago.

7 Q Do you have any independent

8 knowledge that he talked to anybody

9 other than Sheryl Arbogast?

10 A Can't remember.

11 Q You can't remember? Okay. When

12 you said that your mind was triggered by

13 Mr. Earls that you read the report of

14 the Brittains, you read the State's

15 report. Is that what you're saying?

16 A Right. And then they couldn't

17 be located.

18 Q Well, you realize the State

19 located them. Correct?

20 A Correct, and --

21 Q You realize that Ms. Higuera

22 located them. Correct?

23 A I don't real- -- I don't know

24 that.

1 Q All right.

2 A I don't realize that. I don't  
3 know that.

4 Q All right. You said, and  
5 correct me if -- in fact, straighten me  
6 out. I thought you said when Mr. Earls  
7 was questioning you that you were hoping  
8 the provocation would be coming from the  
9 domestic side of the house. Did I  
10 misunderstand that?

11 A No.

12 Q Is that what you said you were  
13 hoping the provocation would come from?

14 A Is that a question?

15 Q Yes. Where did you think the  
16 provocation in voluntary manslaughter  
17 was going to be coming from?

18 A From their relationship.

19 Q From their -- But you didn't put  
20 anything on about their relationship you  
21 said because you wanted to stay away  
22 from it. How can you hope about  
23 something and not produce evidence on it  
24 and expect the result to be that you're

1 proving anything? Can you enlighten me  
2 as to that?

3 A I think we did. I don't  
4 remember, but I'm sure we did.

5 Q Wasn't your testimony earlier  
6 that you were trying to stay away from  
7 that, from that domestic stuff?

8 A Well, at certain -- on  
9 character, yes.

10 Q Well, now, we're not -- we're  
11 not over to character. We're not in the  
12 punishment phase. I'm talking about the  
13 guilt or innocence phase. Provocation  
14 being a necessary element, you would  
15 agree with me, on voluntary  
16 manslaughter. Correct?

17 A And I asked Mr. Hall who we  
18 could call on that, and no one was  
19 available on that issue.

20 Q And again, I want this record  
21 real clear. You didn't talk to Kathy  
22 Hugo, Debbie Davis, the brothers, the  
23 sisters, anybody but Sheryl Arbogast and  
24 then only a couple of times.

1 A Me personally?

2 Q Yes.

3 A I didn't, but Mr. Mayo may have.

4 He talked to Sheryl Arbogast at length.

5 Q And you think that's sufficient.

6 A I did at -- Yeah, I think that

7 -- yeah.

8 Q You think that's sufficient to

9 get ready for a capital murder trial,

10 for the lawyers not to talk to the

11 family members.

12 A We did a lot -- We did a

13 tremendous amount of work to get ready

14 for that case.

15 Q No, sir, but I want this Court

16 and a future appellate court to

17 understand what you were thinking. You

18 were thinking that it's okay, it's not

19 necessary for you as an attorney to talk

20 to the immediate family members and

21 siblings.

22 A When my understanding was they

23 hadn't had any contact with him in

24 years. That was my understanding.

1 Q Yeah, but, if you hadn't talked  
2 to them and your investigators hadn't  
3 talked to anybody but Sheryl Arbogast,  
4 how could you understand that?

5 A I got to talk -- I got to get my  
6 information from Mr. Hall initially, and  
7 he never -- he never -- he never brought  
8 that up.

9 Q I think we're -- I think we're  
10 getting online here. So what you're  
11 telling me is what the Defendant tells  
12 you about the family, whether they're in  
13 touch or not --

14 A I've got to --

15 Q No, let me finish. Is good  
16 enough, and you don't really need to  
17 call those family members to see if Jon  
18 has given you faulty information or  
19 wrong information or information that  
20 can be contradicted in any way. That's  
21 your understanding.

22 A Your question is: Do I need to  
23 investigate Mr. Hall's statement as  
24 being truth -- true or not true or

1 contradictory. Is that the question?

2 Q Yeah. Things he tells you that  
3 you -- that you're --

4 A I think I have to believe the  
5 things he tells me.

6 Q And you don't think you have a  
7 duty to go further than that?

8 A No, not much further.

9 Q And you didn't, did you?

10 A Didn't feel it was necessary,  
11 based on what he told me.

12 Q Okay. My young esteemed counsel  
13 tells me I've got to pin you down. You  
14 said you didn't think it was necessary,  
15 and I agree with him. I need to ask  
16 you: You didn't think it was necessary,  
17 so you didn't do it. Correct?

18 A Based on what Mr. Hall told me,  
19 I did not --

20 Q No, sir. Really, let's get to  
21 -- If you don't mind, please --

22 MR. BUCHANAN: Judge, I'd like  
23 to ask you to --

24 THE COURT: Just listen to the



1 question and respond, and if he needs to  
2 explain, he certainly has a right to do  
3 that. But listen to the question and  
4 respond to the question first.

5 Go ahead, Mr. Buchanan. Ask it  
6 one more time.

7 Q I'm not interested in your  
8 justification for not going and talking  
9 to them, other than Sheryl Arbogast.  
10 You didn't do it, did you?

11 A No.

12 Q Thank you. I just have one  
13 quick little thing. Do you --

14 MR. BUCHANAN: May I -- I don't  
15 -- I want to refresh his -- possibly his  
16 recollection. Can I just approach him  
17 with this document, Judge?

18 THE COURT: Have you seen it,  
19 General?

20 MR. EARLS: I don't know what it  
21 is.

22 THE COURT: Show it to the State  
23 as to what you're showing him.

24 MR. BUCHANAN: Let me show it to

1 him and see if he remembers anything at  
2 all about it.

3 A All right.

4 Q Does that refresh your memory  
5 any about a conversation you may have  
6 had with Mr. Hall about whether or not  
7 he agreed to sign that affidavit on the  
8 back of what's in front of you?

9 A No.

10 Q It doesn't bring to mind any --  
11 you trying to get him to sign it and him  
12 refusing?

13 A No, sir.

14 Q Okay.

15 MR. BUCHANAN: No further  
16 questions, Your Honor.

17 THE COURT: General, anything  
18 further of this witness?

19 MR. EARLS: Just a couple of  
20 things.

21 MR. BUCHANAN: Judge, I'd just  
22 like to mark that as a court's exhibit  
23 so we can refer to it in the future  
24 because I've got another witness to talk

1 to about it.

2 THE COURT: If the State has no  
3 objection to that, be marked Exhibit 9  
4 at this time.

5 MR. EARLS: Wait a minute. I  
6 don't know that --

7 THE WITNESS: I don't know that  
8 I was the -- I don't know that that was  
9 the motion that was filed.

10 MR. BUCHANAN: No, not to put it  
11 in evidence, just to mark it so that  
12 when -- next time I say, "Can I have  
13 Court's Exhibit Number 9," so we can  
14 look at it.

15 THE WITNESS: Judge, I don't  
16 know if that's part of the record.

17 MR. BUCHANAN: I just want it  
18 marked in the record. I don't want it  
19 to be admitted into evidence yet.

20 MR. EARLS: Well it's not been  
21 identified.

22 THE COURT: Do you want it  
23 marked for ID purposes only?

24 MR. BUCHANAN: Only, yes, sir.

1 THE COURT: Okay. Mark it for  
2 ID purposes only.

3 MR. EARLS: Well, I -- Nobody's  
4 identified it yet.

5 MR. BUCHANAN: And I haven't  
6 asked for it to go into evidence yet.

7 THE COURT: He's just asking it  
8 be marked for identification purposes.  
9 He's not asking it to be offered as a  
10 trial exhibit for purposes of this  
11 hearing for my consideration and  
12 rendering final judgment. Now, you're  
13 welcome to it and ask further questions  
14 if you want to pursue identification.  
15 But at this point in time, the State is  
16 correct, it's not been identified. Mr.  
17 Buchanan is only asking it be marked for  
18 ID purposes only.

19 MR. EARLS: Okay.

20 THE COURT: Let it be marked for  
21 identification purposes only, Exhibit 9.

22 (Exhibit 9 for identification  
23 was marked.)

24 THE COURT: And what is it?

1 MR. EARLS: Supplemental motion  
2 for --

3 THE WITNESS: It's a draft.

4 MR. EARLS: -- change of venue.

5 THE WITNESS: A possible draft,  
6 which I don't know whether was filed or  
7 not.

8 THE COURT: Go ahead, General.  
9 You want to ask?

10 RECROSS-EXAMINATION

11 BY MR. EARLS:

12 Q You were asked about character  
13 witnesses and mitigation witnesses. Is  
14 it your understanding of the law that  
15 any mitigator that you prove or try to  
16 prove during the penalty phase, the  
17 State is entitled to rebut?

18 A Oh, yes, absolutely.

19 Q Now, and just so I'm real clear  
20 on the record, you discussed everything  
21 with Jon Hall. Every witness he wanted  
22 you to find and locate you tried to do  
23 that.

24 A Yes.

1 MR. BUCHANAN: I object. This  
2 is repetitious.

3 THE COURT: It really is. It's  
4 cumulative. And, again, General, I've  
5 been listening carefully to the  
6 testimony all day.

7 MR. EARLS: I understand. I  
8 just wanted --

9 THE COURT: Now both sides have  
10 been repetitious, and we've been liberal  
11 with each other.

12 MR. EARLS: That's my last  
13 question.

14 THE COURT: Okay, go ahead.

15 Q Is that yes?

16 A Yes.

17 MR. EARLS: Okay.

18 MR. BUCHANAN: Just one question  
19 so hopefully I won't have to call him  
20 back.

21 THE COURT: And hopefully it's  
22 not repetitious. Go ahead.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. BUCHANAN:

1 Q Mr. Ford, do you remember when  
2 you filed a motion for change of venue,  
3 having an affidavit attached to it?

4 A Don't remember. I'd have to  
5 look at the record. I don't know.

6 Q Fair enough to let the record  
7 speak for itself on that?

8 A Yeah. I -- Yeah.

9 MR. BUCHANAN: No further  
10 questions.

11 MR. EARLS: Nothing further.

12 (WITNESS EXCUSED.)

13 THE COURT: If Petitioner's side  
14 will update us on where we stand. I can  
15 stay and we can take more proof today,  
16 if you're not down to this one witness  
17 tomorrow.

18 MR. BUCHANAN: We're -- We're --  
19 I think we're down to Jon Hall, unless  
20 somebody shows up that was subpoenaed  
21 that didn't show up tomorrow, and if  
22 they did, they're very, very short, but  
23 as far as I know -- It went way faster  
24 than I thought it would go, Judge.

1 THE COURT: Well now, regarding  
2 those two witnesses that were not here  
3 when you called their names out and then  
4 we moved on to Mr. Ford, are you seeking  
5 any specific relief regarding that, or  
6 are you going to pursue it on your own  
7 tonight knowing they'd be brief  
8 witnesses if they did come?

9 MR. BUCHANAN: Let me let him  
10 speak to that. They were his witnesses.

11 THE COURT: Okay.

12 MR. ELLIS: Your Honor, I would  
13 like -- I don't want to throw anybody in  
14 jail. I'd like to try to contact them  
15 tonight by phone if I may. I would like  
16 to just reserve that, and if I'm unable  
17 to do so, send somebody out tomorrow.

18 THE COURT: I would still let  
19 you put them on if they're here  
20 tomorrow. If it's cumulative, as we've  
21 heard from several witnesses that were  
22 prior neighbors, then I -- I don't --  
23 that would be your decision.

24 MR. ELLIS: Your Honor, and



1 correct me -- Ms. Higuera will correct  
2 me if I'm wrong, but I believe that  
3 these people could testify of his  
4 intoxication that night, which I think  
5 --

6 THE COURT: Well I'm offering --

7 MR. ELLIS: Especially given the  
8 testimony of Mr. Ford today, that's very  
9 relevant.

10 THE COURT: I'm offering, and  
11 you say you don't want the help, to  
12 bring these witnesses in through the  
13 assistance of those that can get them  
14 here, I take it, in violation of the  
15 subpoena. But if you want to do it on  
16 your own, that's your choice now.

17 MR. ELLIS: Your Honor, let us  
18 try it on our own.

19 THE COURT: So we anticipate  
20 then possibly those other two witnesses  
21 briefly and then your client. Is that  
22 correct?

23 MR. BUCHANAN: Yes, sir. And I  
24 -- barring something unforeseen that the

1 Lord only knows could happen, I predict  
2 we'll be out by noon.

3 THE COURT: Of course, we still  
4 have State's -- Well, --

5 MR. BUCHANAN: Yeah, I mean our  
6 side.

7 MR. EARLS: I don't want to  
8 belabor the point, Your Honor, but let  
9 me -- because I've got a witness that's  
10 on standby, are you going to take me out  
11 of turn since they --

12 THE COURT: That's why I wanted  
13 to talk about this now. That's my  
14 point. I mean, is the State going to go  
15 tomorrow, or is the State asking to wait  
16 until they come back with expert  
17 witnesses?

18 MR. EARLS: Well I want to wait,  
19 Your Honor, because even if I go now,  
20 I'm going to have to put on some more  
21 proof.

22 THE COURT: Well I think that --  
23 I think I've got to accept that under  
24 the circumstances. I don't think the

1 Petitioner's side can say anything other  
2 than we have to accept it.

3 MR. BUCHANAN: No. I want the  
4 Court to know that if Mr. Earls has a  
5 problem and needs to take somebody out  
6 of course, I don't have any problem with  
7 that.

8 THE COURT: You'll be  
9 cooperative.

10 MR. BUCHANAN: Yes, sir.

11 THE COURT: Certainly. And I  
12 appreciate and respect that, but you're  
13 anticipating resting your case tomorrow  
14 as we just discussed.

15 MR. BUCHANAN: Yes, sir.

16 THE COURT: Short of the experts  
17 to come at the later date.

18 MR. BUCHANAN: Yes, sir.

19 THE COURT: With that having  
20 been said then, gentlemen, let me point  
21 out a couple of things. We have two  
22 exhibits that need to be cleaned up, so  
23 to speak, Exhibits 7 and 8. One's the  
24 memo from an investigator, and the

1 other's the mitigation assessment. Now  
2 they've been offered today and marked as  
3 exhibits. We have an agreement clean  
4 copies will be substituted. Exhibit 8  
5 is -- I think just stick 'em notes could  
6 be taken off.

7 MR. BUCHANAN: I think that's  
8 probably true.

9 THE COURT: And do that now.  
10 And the other, I just assume y'all have  
11 got a clean copy somewhere, but that's  
12 Exhibit 8. If you can just take the  
13 stick 'em notes off, Exhibit 8 will be  
14 taken care of.

15 MR. BUCHANAN: I think that's  
16 correct.

17 THE COURT: Look at it then  
18 before you leave. Let's know that's  
19 surrendered to the court reporter. And  
20 then take care of Exhibit 7 by tomorrow  
21 if you would. I just want to get  
22 everything in order.

23 MR. BUCHANAN: Exhibit 7 is?

24 THE COURT: That's the memo from

1 Gloria Shettles.

2 MR. BUCHANAN: Okay, yes, sir.

3 There's a clean copy in existence in  
4 those nine boxes somewhere.

5 THE COURT: Okay. I have other  
6 attorneys and a client reporting in at  
7 7:45 in the morning, so I'll be here  
8 earlier anyway. Not because they're  
9 coming, I just do that. But I'm going  
10 to try to clear that up at 7:45 so I'll  
11 know whether I'm going to take a plea or  
12 schedule a jury trial for Friday since  
13 this case is not going to Friday. But  
14 I'll know that on time so hopefully we  
15 can get started about 8:00 in the  
16 morning.

17 MR. ELLIS: May it please the  
18 Court, Your Honor, I know Mr. Buchanan  
19 is cleaning up evidence, but in terms of  
20 resting, Your Honor, we were going to  
21 take this up, and I think now would be  
22 an appropriate time, about Mr. Hall's  
23 mother. We would -- Your Honor, we  
24 would respectfully like to rest

1 tomorrow, however, we'd like to leave  
2 open the ability to take Mrs. Hall's  
3 deposition, considering her state, that  
4 she's unable to travel.

5 THE COURT: I think if you want  
6 to take a deposition, you're leaving  
7 your side open anyway, with the offer  
8 from your side that the State could take  
9 somebody out of order and they choose  
10 not to do so at this point unless they  
11 change their mind, but the deposition  
12 issue should be -- you should give the  
13 State notice that this is what you're  
14 asking for. She's located where?  
15 Pennsylvania?

16 MR. BUCHANAN: Pennsylvania.

17 THE COURT: And that's something  
18 I don't -- How long has she been  
19 unavailable? How long have you known  
20 she's unavailable?

21 MR. BUCHANAN: The testimony, I  
22 went ahead and put it on. I've known it  
23 probably since the middle of last week,  
24 and I didn't see any chance of getting a

1 depo done before, and actually I was  
2 planning on hitting the Court with some  
3 motions early next week to explain that,  
4 but we can do it then or --

5 MR. ELLIS: Your Honor, I was  
6 just preserving for the record that when  
7 we stopped tomorrow, that wasn't it.

8 THE COURT: Well we already  
9 decided it wasn't it, and I appreciate  
10 you being cautious and letting us know  
11 it wasn't in regard to that possible  
12 issue, too, but that's something I'm  
13 going to let you talk to the State  
14 about, and we'll have to -- you'll have  
15 to do something more formally than just  
16 stand up orally now under the rules  
17 before I can approve that.

18 MR. ELLIS: Again, Your Honor, I  
19 understand. I just wanted to bring it  
20 to your attention.

21 THE COURT: Okay. Anything else  
22 today, gentlemen?

23 MR. BUCHANAN: No, sir.

24 THE COURT: All right. We'll

1 stand in recess. I'm going to give the  
2 exhibits to the court reporter. She'll  
3 make sure she has all the exhibits.

4 - - - - -

5 END OF VOLUME III.

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